TEXAS REGISTER

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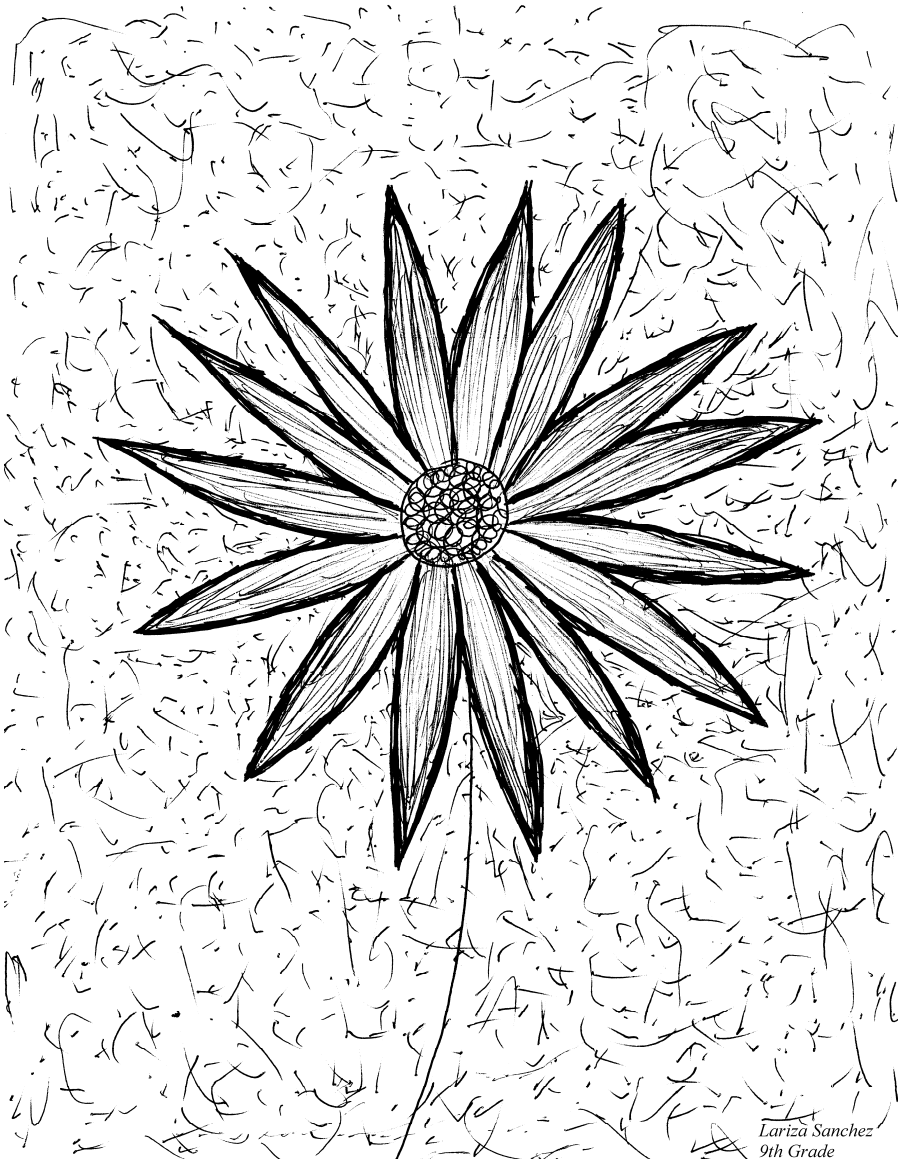

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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North Central Texas Council of Governments

Public Utility Commission of Texas

WorkForce Solutions South Plains

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.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.state.tx.us/

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 23, 2009

Appointed to the Texas Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2015, Pamela R. Akins of Austin (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Texas Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2015, Ann Quinn Todd of Houston (replacing Carolyn Hutchinson of Harlingen whose term expired).

Appointed to the Texas Economic Development Corporation for a term at the pleasure of the Governor, Victor E. Leal of Canyon. Mr. Leal is replacing Jane Juett of Amarillo who resigned.

Appointments for April 27, 2009

Appointed to be Texas Commissioner of Insurance for a term to expire February 1, 2011, Michael Scott Geeslin of Austin. Mr. Geeslin is being reappointed.

Appointments for April 28, 2009

Appointed to the Finance Commission of Texas for a term to expire February 1, 2014, Lori B. McCool of Boerne. Ms. McCool is replacing Stanley Rosenberg of San Antonio who resigned.

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2011, Patti H. Johnson of Canyon Lake. Ms. Johnson is replacing Connie de la Garza of Harlingen who resigned.

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2009, William R. McDaniel of Montgomery. Mr. McDonald is replacing Brian Thomas of Amarillo who resigned.

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2013, Ellis M. Skinner, II of Spicewood. Mr. Skinner is replacing Cesar Maldonado of Harlingen who resigned.

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2015, Doyle "Neal" Newsom, III of Plains (replacing Joyce Obst of Alamo whose term expired).

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2015, Ly H. Nguyen of Sugar Land (Ms. Nguyen is being reappointed).

Designating Doyle Newsom, III as presiding officer of the Produce Recovery Fund Board for a term at the pleasure of the Governor. Mr. Newsom is replacing Joyce Obst of Alamo as presiding officer.

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2011, Guy K. Diedrich of Austin (replacing Richard Ewing of College Station who is deceased).

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2015, Daniel A. Hanson of Dallas (Mr. Hanson is being reappointed).

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2015, Paul C. Maxwell of El Paso (Dr. Maxwell is being reappointed).

Appointed to the Product Development and Small Business Incubator Board for a term to expire February 1, 2015, Harvey Rosenblum of Dallas (Mr. Rosenblum is being reappointed).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2015, Mary Lynn Baty of Humble (replacing Helen McKibbin of Lubbock whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2015, William R. Birdwell of Bryan (replacing Norman Mason of Austin whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2015, Whitney Hyde of Midland (replacing Charles Wetherbee of Boerne whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2015, Rodolfo G. Ramos, Jr. of Houston (replacing George Strunk of Longview whose term expired).

Rick Perry, Governor

TRD-200901611

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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.)

Request for Opinions

RQ-0794-GA

Requestor:

Ms. Adelaide Horn

Commissioner of Aging and Disability Services

Texas Department of Aging and Disability Services

Post Office Box 149030

Austin, Texas 78714-9030

Re: Whether the Texas Department of Aging & Disability Services may authorize assisted living facilities to provide nursing services to terminally ill patients and others (RQ-0794-GA)

Briefs requested by May 25, 2009

RQ-0795-GA

Requestor:

The Honorable John Mark Cobern

Titus County Attorney

100 West First Street

Mount Pleasant, Texas 75455

Re: Whether the behavioral health unit of the Titus Regional Medical Center is a "private facility" for the purpose of the filing fee required by section 118.055, Local Government Code (RQ-0795-GA)

Briefs requested by May 25, 2009

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

TRD-200901617

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 29, 2009

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Opinions

Opinion No. GA-0711

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Definition of "audit" for purposes of section 775.082, Heath and Safety Code (RQ-0759-GA)

S U M M A R Y

In light of, and in deference to, the Texas State Board of Public Accountancy's view of section 901.004, Occupations Code, a county auditor who is a certified public accountant may ethically perform an audit under section 775.082, Health and Safety Code.

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

TRD-200901618

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 29, 2009

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

1 TAC §6.5

The Texas Ethics Commission proposes an amendment to §6.5, relating to the Texas Ethics Commission's authority to adopt rules.

Currently under §6.5, the commission may not adopt a rule that in the opinion of the commission, directly addresses the subject of pending litigation known to the commission. The proposed amendment clarifies that the Texas Ethics Commission may adopt a rule that concerns the subject matter of a sworn complaint if the sworn complaint has not reached the formal hearing stage.

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

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

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

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

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment to §6.5 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §6.5 affects §571.062 of the Government Code.

§6.5. Authority to Adopt Rules.

(a) This title is adopted under the authority granted by the Act, the Administrative Procedure Act, and by any other law administered and enforced by the commission that establishes the commission's authority to adopt rules.

(b) The commission will not adopt a rule that in the opinion of the commission, directly addresses the subject matter of pending litigation known to the commission.

(c) For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission only if the Government Code Subchapters C - H, Chapter 2001, apply to the proceeding.

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901566
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 463-5800

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CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.3

The Texas Ethics Commission proposes an amendment to §8.3, relating to the subject matter of an advisory opinion issued by the Texas Ethics Commission.

Currently under §8.3, the commission may not issue an advisory opinion that concerns the subject matter of pending litigation known to the commission. The proposed amendment clarifies that the Texas Ethics Commission may issue an advisory opinion that concerns the subject matter of a sworn complaint if the sworn complaint has not reached the formal hearing stage.

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

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

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

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

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment to §8.3 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §8.3 affects §571.091 of the Government Code.

§8.3. Subject of an Advisory Opinion.

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

(c) For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission only if the Government Code Subchapters C - H, Chapter 2001, apply to the proceeding.

(d) [~~(c)~~] An advisory opinion cannot resolve a disputed question of fact.

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901567
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§34.22 - 34.25

The Texas Ethics Commission (the commission) proposes new §§34.22 - 34.25, relating to the valuation of a ticket to an entertainment event, including a sporting event.

Chapter 305 of the Government Code contains a number of restrictions on expenditures by registered lobbyists. (Chapter 305 of the Government Code also contains a number of restrictions on the acceptance of lobby expenditures by state officers, state employees, immediate family and guests of state officers and employees, candidates for state offices, and officers-elect.) One of the restrictions is for entertainment. A registered lobbyist is subject to an aggregate $500 maximum annual expenditure limit for entertainment for an individual state officer or employee, or immediate family or guests invited by a state officer or employee.

A question that often arises is what standard should be used under the lobby law to determine the value of entertainment in the form of a ticket to an entertainment event, including a sporting event. At its April 2009 meeting, the commission voted to propose the following four rules consisting of two options to clarify the question: Option 1 consists of §34.22 and §34.23, and Option 2 consists of §34.24 and §34.25.

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

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

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

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

The Texas Ethics Commission invites comments on the proposed new rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new §§34.22 - 34.25 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §§34.22 - 34.25 affect Chapter 305 of the Government Code.

§34.22. Valuation of Ticket (Option 1).

(a) For purposes of Chapter 305 of the Government Code and this chapter, and except as provided by §34.23 of this chapter (relating to Valuation of Ticket to a Suite (Option 1)):

(1) the value of a ticket to an entertainment event, including a sporting event, is the higher of:

(A) the face value of the ticket; or

(B) the amount paid for the ticket by the donor or a person on the donor's behalf and with the donor's consent or ratification.

(2) if the ticket has no face value, the value of the ticket is:

(A) the amount paid for the ticket by the donor or a person on the donor's behalf and with the donor's consent or ratification; or

(B) if no payment was made for the ticket by the donor or by a person on the donor's behalf and with the donor's consent or ratification, the fair market value at the time the ticket is accepted.

(b) Any reasonable method for determining the fair market value must factor in the value of a comparable ticket in an arm's length transaction.

§34.23. Valuation of Ticket to a Suite (Option 1).

For purposes of Chapter 305 of the Government Code and this chapter, the value of a ticket to an entertainment event, including a sporting event, obtained pursuant to a lease or other agreement for the right to use a suite and for the right to obtain tickets to the suite is as follows:

(1) if the ticket has a face value, the value of the ticket is calculated according to the following formula:
Figure: 1 TAC §34.23(1)

(2) if the ticket has no face value, the value of the ticket is calculated according to the formula in paragraph (1) of this section with the value of the highest priced ticket to the same suite with a face value used as the face value of the ticket.

(3) if none of the tickets to a suite have a face value, the value of a ticket is calculated according to the formula in paragraph (1) of this section with "$0" used as the face value of the ticket.

(4) if the number of events to which a person has the right to use the suite is not known, the number of events to which a person had the right to use the suite in the previous year may be used.

§34.24. Valuation of Ticket (Option 2).

For purposes of Chapter 305 of the Government Code and this chapter:

(1) the value of a ticket to an entertainment event, including a sporting event, is the higher of:

(A) the face value of the ticket; or

(B) the amount paid for the ticket by the donor or a person on the donor's behalf and with the donor's consent or ratification.

(2) if the ticket has no face value, the ticket has the same value as a ticket with a face value to the same event in the immediate proximity of the location of the ticket with no face value.

§34.25. Valuation of a Suite at an Entertainment Event (Option 2).

For purposes of Chapter 305 of the Government Code and this chapter, the value of a suite (including other similar hospitality venues) at an entertainment event obtained pursuant to a lease or other agreement for the right to use the suite is as follows:

(1) for purposes of this formula the value of a ticket shall be determined as provided in §34.24 of this chapter (relating to Valuation of Ticket (Option 2)).
Figure: 1 TAC §34.25(1)

(2) this allocated cost would then be added to any other food and beverage costs for the event and reported as part of the food and beverage cost for the particular event under consideration.

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

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901542
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 73. STATUTORY DOCUMENTS
SUBCHAPTER F. DISCLOSURE STATEMENT OF CONDITIONAL GIFTS

1 TAC §73.91

The Office of the Secretary of State proposes an amendment to 1 TAC §73.91, concerning disclosure of conditional gifts. Nonsubstantive changes are proposed to correct an outdated citation to the United States Code and capitalize a letter.

Two specific changes are proposed: (1) capitalization of the "f" in "federal" in two places where the word modifies "Department of Education;" and (2) correct an outdated citation to 20 United States Code 1145d to 20 United States Code 1011f.

FISCAL NOTE

Leigh A. Joseph, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the section is in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the amendment as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Joseph has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering the section as proposed will be to view the rule as corrected. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

COMMENTS

Comments on the proposed amendment may be submitted in writing to: Leigh A. Joseph, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12 noon, May 29, 2009.

STATUTORY AUTHORITY

This amendment is proposed under the authority of §51.573, Texas Education Code, which provides that the secretary of state shall prescribe the form and contents of a disclosure statement of conditional gifts in accordance with federal law.

Chapter 51, Texas Education Code, is affected by these rules.

§73.91. Disclosure Statement of Conditional Gifts from Foreign Persons.

(a) The governing board of an institution required to file a statement disclosing a conditional gift from a foreign person with the Office of the Secretary of State under Texas Education Code Annotated,

§51.572, shall file such statement in the same form as that required to be filed with the Federal [federal] Department of Education pursuant to 20 United States Code 1011f [1145d].

(b) An institution shall make the filing required under subsection (a) of this section with the Office of the Secretary of State on the dates specified for the filing to be made with the Federal [federal] Department of Education pursuant to 20 United States Code 1011f [1145d].

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901503
Lorna Wassdorf
Director of Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 463-5562

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PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE SUBCHAPTER D. JUDGES

1 TAC §155.157

The State Office of Administrative Hearings (SOAH) proposes an amendment to Subchapter D, Judges, §155.157, concerning Sanctioning Authority. The amendment is being proposed to clarify subsection (a) paragraph (1). Specifically, SOAH proposes to delete subparagraphs (D) and (E) of paragraph (1) and insert the wording deleted from those subparagraphs into two new paragraphs, (2) and (3), in subsection (a). SOAH proposes to make this amendment because as they currently read, subparagraphs (D) and (E) do not describe an improper motion as intended by paragraph (1), but instead describe a separate basis for sanctions.

Kerry D. Sullivan, General Counsel, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering it.

Mr. Sullivan also has determined that for the first five-year period the amended rule is in effect the public benefit anticipated as a result of the rule will be in clarifying the separate bases for SOAH judges to use sanctioning authority. There will be no effect on small businesses as a result of enforcing the rule. The proposed amendment would have no fiscal impact on small businesses, and there is no anticipated economic cost to individuals who are required to comply with the amended rule.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at debra.anderson@soah.state.tx.us, or by facsimile to (512) 463-1576.

The amendment is proposed under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH.

The amendment affects Government Codes, Chapters 2001 and 2003.

§155.157. Sanctioning Authority.

(a) Authority to impose sanctions. For contested cases referred by an agency other than the PUC or the TCEQ, the judge has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the judge to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) [(D)] abuse of the discovery process in seeking, making, or resisting discovery; or

(3) [(E)] failure to obey an order of the judge or a SOAH or referring agency rule.

(b) (No change.)

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901568
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 475-4931

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.723

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.723, relating to Reimbursement Methodology for Home and Community-based Services (HCS) under Title 1, Part 15, Chapter 355, Subchapter F.

Background and Justification

This rule establishes the reimbursement methodology for the Home and Community-based Services (HCS) waiver program. HHSC, under its authority and responsibility to administer and implement rates, is updating this rule to describe how administrative and operations expenses are allocated to the various HCS service types, to delete language indicating that payment rates are determined annually and that state-operated HCS providers are reimbursed at cost, and to clarify the current reimbursement methodology.

The Department of Aging and Disability Services (DADS) provides individualized services and supports to persons with mental retardation who are living with their families, in their own homes, or in other community settings, such as small group homes, through the HCS Medicaid waiver program. In order to receive matching federal funds, this waiver requires approval from the federal Centers for Medicare and Medicaid Services (CMS).

Under the current HCS reimbursement methodology, a monthly "Administration and Operations" fee is used to reimburse providers for certain administration and operations expenses related to various HCS services. The fee is currently a flat $938.62 per consumer per month or approximately $11,263 per annum. In 2008, a waiver renewal application was submitted to CMS for the HCS waiver program which was set to expire August 31, 2008. During the renewal process, CMS informed HHSC that the manner in which the state reimbursed providers for administration and operations costs was not allowable under the Medicaid program. As a condition of the waiver approval, CMS instructed HHSC to develop and implement a new payment methodology that would not reimburse for administration and operations expenses as a separate monthly payment but would incorporate those costs into the rate for covered services. CMS instructed HHSC to have this new payment methodology in place by September 1, 2009.

In response to provider concerns regarding CMS's directive, HHSC submitted a letter to CMS in October 2008 requesting that CMS reconsider their decision to redistribute the monthly fee. CMS responded in January 2009 reaffirming their direction and requiring HHSC to submit a corrective action plan on how it intended to redistribute the monthly fee in order to maintain federal funding for the HCS waiver program.

To come into compliance with the CMS directive, HHSC formed a workgroup and gathered feedback on possible options to redistribute the monthly administration and operations fee to the individual services in the HCS waiver. HHSC considered the feedback from the workgroup and other interested parties. This proposed rule reflects the results of that feedback by proposing weighting factors for distributing these costs. While this proposed weighting methodology represents a reduction in the total administration and operations reimbursement for foster/companion care providers, it equalizes the percent of the total rate paid to foster/companion care and residential care providers for their administration and operations costs.

Language indicating how often payment rates are determined is being deleted because the frequency of rate determination is addressed in §355.101 of this title (relating to Introduction). Language indicating that state-operated HCS providers are reimbursed at cost is being deleted because there are currently no state-operated HCS providers and, if there were, they would be reimbursed in the same manner as all other HCS providers. Language concerning the reimbursement methodology is being modified to clarify the rate determination process.

Section-by-Section Summary

The proposed amendment to §355.723:

Revises subsection (a) to add a title and to delete language pertaining to the frequency of rate determination.

Deletes subsection (b) as an obsolete reference to state-operated HCS providers and renumbers subsequent subsections within this section.

Revises re-lettered subsection (b) to add a title and to indicate that only rates for residential support, supervised living, HCS foster/companion care and day habilitation vary by level of need.

Revises re-lettered subsection (c) to add a title and to list the cost components included in the HCS rates.

Adds subsection (d) which describes how the administration and operation cost component included in the recommended rate is calculated.

Deletes subsection (e) because the cost factors listed in this subsection are now listed as cost components in renumbered subsection (c) and renumbers subsequent subsections within this section. The list of cost components in renumbered subsection (c) is identical to the list of cost factors in deleted subsection (e) except that "non-personnel operation costs" have been replaced with "operation costs".

Revises re-lettered subsection (e) to add a title and replaces the term "factors" with the term "components".

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government because the amendment merely reallocates existing funds across services. While some providers will receive reduced Medicaid revenues under the amended rule and others will receive increased Medicaid revenues, overall, the amendment is budget neutral. The amended 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 section.

Small Business and Micro-business Impact Analysis

HB 3430 requires the Office of the Attorney General (OAG) to prepare guidelines for state agencies to use when they prepare economic impact statements and flexibility analyses for proposed administrative rules.

Under Section 2006.002(c-1), Government Code, an agency must "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 business." The OAG guidelines declare the following:

An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses would not be protective of the health, safety and environmental and economic welfare of the state. One common example would appear to fit within this exception. Agencies may be required to adopt as rules specific fees or specific standards and procedures under a legislative or federal mandate. In such a situation, the mandated language may be considered *per se* consistent with the health, safety, or environmental and economic welfare of the state and

the agency need not consider other regulatory methods (source: Office of the Attorney General, "HB 3430 Small business Impact Final Guidelines," p. 7 (April 2008).

In a letter dated January 5, 2009, to Mr. Chris Traylor, Associate Commissioner for Medicaid/CHIP, CMS directed the Texas Health and Human Services Commission to develop a new rate methodology that would eliminate the separate Administration and Operations rate and move administrative costs into the base of each waiver service. Thus, this proposed amendment is a federal mandate and, in accordance with the OAG guidelines, the commission need not consider any other regulatory methods to achieve the intended administrative outcome.

Public Benefit

Carolyn Pratt, 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 the rate determination methodology for the HCS waiver program will be in compliance with CMS requirements thereby maintaining federal funding for this program. As well, obsolete and duplicative rule language will be eliminated and the reimbursement methodology will be clarified.

Takings Impact Assessment

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

HHSC will conduct a public hearing on May 27, 2009, at 9:30 a.m. to receive public comment on this proposed amendment. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Josie Wheatfall by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

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

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

§355.723. Reimbursement Methodology for Home and Community-Based Services (HCS).

(a) Prospective payment rates. HHSC sets payment rates to be paid prospectively to HCS providers [~~annually. Rates are prospective in nature~~].

[~~(b) Reimbursement rates apply to all non-state operated HCS providers uniformly by type of service component provided and the individual's level-of-need. Reimbursements for state-operated HCS providers are adjusted based on allowed costs reported at the end of the state fiscal year, in accordance with this subchapter. The state-operated cost adjustment will not exceed allowable federal maximums.~~]

(b) [~~(c)~~] Levels of need. Rates vary by level of need for residential support, supervised living, HCS foster/companion care, and day habilitation. Rates do not vary by level of need for any other HCS service.

(c) [~~(d)~~] Recommended rates. The recommended modeled rates for each HCS service type and level of need include the following cost components: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. [~~are based on cost components deemed appropriate for a provider.~~] The determination of these components is based on cost reports submitted by HCS providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) Providers).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rate described in subsection (c) of this section for each HCS service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine projected weighted units of service for each HCS service type as follows:

(A) Supervised Living and Residential Support Services. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00;

(B) Day Habilitation. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25;

(C) Foster/Companion Care. Projected weighted units of service for Foster/Companion Care equal projected Foster/Companion Care units of service times a weight of 0.50;

(D) Supported Home Living. Projected weighted units of service for Supported Home Living equal projected Supported Home Living units of service times a weight of 0.30;

(E) Respite. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20;

(F) Supported Employment. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25;

(G) Behavioral Support. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18;

(H) Physical Therapy, Occupational Therapy, Speech Therapy and Audiology. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy and Audiology equal projected Physical Therapy, Occupational Therapy, Speech Therapy and Audiology units of service times a weight of 0.18;

(I) Social Work. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18;

(J) Nursing. Projected weighted units of service for Nursing equal projected Nursing units of service times a weight of 0.18.

(3) Step 3. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (2)(A) - (J) of this subsection.

(4) Step 4. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (2) of this subsection by the total projected weighted units of service from paragraph (3) of this subsection.

(5) Step 5. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (4) of this subsection by the total administration and operation costs from paragraph (1) of this subsection.

(6) Step 6. Calculate the administration and operation cost component per unit of service for each HCS service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (5) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

~~[(e) The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.]~~

(e) ~~[(f)]~~ Refinement and adjustment. Refinement/adjustment of the cost components ~~[factors]~~ and model assumptions will be considered, as appropriate, by HHSC.

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901560
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

4 TAC §§19.410 - 19.413

(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, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Agriculture (the department) proposes to repeal §§19.410 - 19.413, concerning a quarantine for the Asian Citrus Psyllid, *Diaphorina citri* Kuwayama. The Animal and Plant Health Inspection Service (APHIS) agency of the United States Department of Agriculture (USDA) issued a Federal Order on November 2, 2007, titled "Expansion of the quarantines for citrus greening and Asian citrus psyllids," which quarantined 32 Texas counties for this psyllid insect pest. The Federal Order required the department to establish a parallel quarantine by December 1, 2007; otherwise APHIS cautioned it would quarantine the entire state of Texas to prevent the spread of the psyllid to other states. To avoid APHIS' statewide quarantine, the department quarantined 32 counties on an emergency basis on December 14, 2007, as published in the *Texas Register* (32 TexReg 9185). Later, the department published a proposed rule to quarantine these 32 counties in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1475) and adopted the proposal on April 4, effective on April 24, 2008, as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3260).

As the psyllid survey continued, the insects were found in four additional counties, which were added to §19.411 and §19.413 of the quarantine on an emergency basis on August 27, 2008, as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7653). The department withdrew this emergency amendment to §19.411 and §19.413 on November 5, 2008, as published in the November 21, 2008, issue of the *Texas Register* (33 TexReg 9449). APHIS issued a federal order on January 28, 2009, which quarantined the entire state of Texas for the psyllid, and consequently rendered the department's Asian Citrus Psyllid quarantine obsolete. Consequently, the department repealed §§19.410 - 19.413 on January 30, 2009, by filing an emergency rule, which was published in the *Texas Register* on February 13, 2009 (34 TexReg 911) and is now in effect.

The department believes that it is necessary to repeal §§19.410 - 19.413 because the January 28, 2009, Federal Order quaran-

tines the entire state of Texas for the psyllid. The only recourse available to the department to align with the federal quarantine is to repeal the state quarantine. If the corrective action were not taken, it would create confusion among the traders, primarily of the citrus plants, about the intrastate and interstate shipping requirements.

In Texas, about 90 percent of the quarantined articles, primarily citrus nursery plants, are produced by nurseries located in the 32 quarantined counties and these nurseries also sell about 70 percent of the plants into free counties. Prohibiting movement of these plants to free counties would be a significant economic hardship to these nurseries. Furthermore, APHIS informed the department if the state cannot comply with the federal requirement of prohibiting movement of the quarantined articles from the psyllid-infested counties to psyllid-free counties within a state, then APHIS would quarantine the entire state for the Asian citrus psyllid. The department consulted with representatives of the state's nursery, citrus, and produce associations, and all suggested repealing the state's Asian Citrus Psyllid Quarantine and allowing APHIS to quarantine the entire state, which would mean quarantined articles could be moved within the state without any restrictions and without the treatment. While quarantined articles are seldom moved outside Texas, APHIS would assist such movement by issuing limited permits provided the prescribed treatment regimen is followed. The department will also assist APHIS if needed to expedite issuance of the required certification. In addition, the department will inform nursery managers in the quarantined counties who have entered into a compliance agreement with the department to treat the quarantined articles for movement to free counties that the department is canceling the agreement and that the quarantined articles are free to move within Texas without any treatment for the psyllids.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implication for the state or local government for enforcing or administering the appeal.

Dr. Nilakhe also has determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated will be the saving of $40,320 in treatment cost for commercial citrus nursery growers located in the quarantined area to ship the psyllid host plants to the non-quarantined area of Texas. Repealing the quarantine will have no adverse economic impact on the nurseries, including those classified as small businesses or micro-businesses, or individuals required to comply with the repeal. Because there is no fiscal impact on small or micro-businesses, no regulatory flexibility analysis is required.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal of §§19.410 - 19.413 is proposed under the Texas Agriculture Code (the Code), §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; and, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area; or provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.410. Quarantined Pests.

§19.411. Quarantined Areas.

§19.412. Quarantined Articles.

§19.413. Restrictions.

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

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901559
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.24

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.24, concerning Criteria and Approval of Mission Statements and Tables of Programs. Specifically, the proposed changes would authorize the elimination of preliminary authority for programs that meet the following criteria: (a) the program has institutional and Board of Regents approval, (b) the program is a non-doctoral program, (c) the program is a non-engineering program, and (d) the program would be offered by a university or health-related institution. The amendments would also permit the Commissioner of Higher Education to approval doctoral-level preliminary authority requests.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be quicker

response time to institutions of higher education on actions related to preliminary authority requests in order to meet workforce needs and student demand. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@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 the Texas Education Code, Chapter 61, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendments affect implementation of Texas Education Code, §§61.304 - 61.319 and 61.3021.

§5.24. Criteria and Approval of Mission Statements and Tables of Programs

(a) In reviewing a request for preliminary authority to add a program (baccalaureate, master's, and doctoral) to the institution's Table of Programs, the Commissioner [~~Board~~] shall consider:

(1) - (4) (No change.)

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Commissioner [~~Board~~] shall consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) - (6) (No change.)

(7) how the program will address Closing The Gaps by 2015; [~~and~~]

(8) institutional resources to develop and sustain a high-quality program; and[~~.~~]

(9) (No change.)

(c) Review and Approval Process.

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

(3) The Board shall approve or re-approve the mission statement [~~and table of programs of each institution following the review described in paragraph (1) of this subsection~~]. Each institution shall be given an opportunity to be heard by the Board about these matters.

(4) Preliminary authority is not required if a degree program meets all of the following conditions:

(A) The program has institutional and Board of Regents approval.

(B) The program is a non-doctoral program.

(C) The program is a non-engineering program (i.e., not classified under CIP code 14).

(D) The program would be offered by a university or health-related institution.

(5) All other requests for preliminary authority shall be made using the standard preliminary authority request form and shall be approved or denied by the Commissioner.

(6) [~~(4)~~] Outside the normal review process described in paragraph (1) of this subsection, an institution may request of the Board an amendment to its authorized role and mission and/or preliminary authority for additional degree programs at any time the Commissioner determines that compelling circumstances warrant.

(7) [~~(5)~~] After approval or re-approval, requests for new programs and administrative changes shall be considered in the context of the approved role and mission for the institution.

(8) [~~(6)~~] The Commissioner may approve minor changes to the mission statement [~~or table of programs~~] of an institution during the period between the reviews referenced in paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901509
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

19 TAC §5.44

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.44, concerning Presentation or Requests and Steps for Implementation. The amendments to §5.44(a) would modify the approval process for new bachelor's and master's programs. Approval of new bachelor's and master's programs would be automatic if they meet the following criteria: (a) the program has institutional and Board of Regents approval; (b) the institution certifies compliance with the Standards for New Bachelor's and Master's Programs developed by the Coordinating Board; (c) the institution certifies that adequate funds are available to cover the costs of the program; (d) new costs during the first five years of the program would not exceed $2,000,000; (e) the program is a non-engineering program (i.e., not classified under CIP code 14); (f) the program would be offered by a university or health-related institution; and (g) no objections to the proposed program are received by the Coordinating Board during the 30-day public comment period. The amendments to §5.44(b) would clarify the approval process for new undergraduate and graduate certificate programs. Approval would be automatic if a new certificate program meets the following criteria: (a) the certificate program has institutional and Board of Regents approval, (b) the institution certifies that adequate funds are available to cover the costs of the program, (c) the certificate programs meets all other criteria in §5.48, and (d)

no objections to the proposed certificate program are received by the Coordinating Board during the 30-day public comment period. The amendments to §5.44(c) would clarify the approval process for changes in the administrative structure of an institution of higher education. Approval would be automatic if an administrative change meets the following criteria: (a) the administrative change has institutional and Board of Regents approval; (b) the institution certifies that adequate funds are available to cover the costs of the administrative change; (c) new costs during the first five years would not exceed $2,000,000; (d) the administrative change meets all other criteria in §5.47; and (e) no objections to the proposed administrative change are received by the Coordinating Board during the 30-day public comment period.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be in enabling institutions of higher education to address workforce needs and student demand for new programs more quickly and efficiently. In addition, the public will benefit by the Coordinating Board staff work focusing on the quality of existing degree programs in the state of Texas, rather than on the upfront review. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@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 the Texas Education Code, Chapter 61, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendments affect implementation of Texas Education Code, §§61.304 - 61.319 and 61.3021.

§5.44. Presentation of Requests and Steps for Implementation.

(a) Requests for new degree programs[~~, certificate programs, and administrative units~~] shall be made in accordance with the following procedures [~~specified by the Commissioner~~].

(1) Approval of new bachelor's and master's programs is automatic if all of the following conditions are met:

(A) The program has institutional and governing board approval.

(B) The institution certifies compliance with the Standards for New Bachelor's and Master's Programs.

(C) The institution certifies that adequate funds are available to cover the costs of the new program.

(D) New costs during the first five years of the program would not exceed $2 million.

(E) The program is a non-engineering program (i.e., not classified under CIP code 14).

(F) The program would be offered by a university or health-related institution.

(G) No objections to the proposed program are received by the Coordinating Board during the 30-day comment period.

(2) If a proposed bachelor's or master's program meets the conditions in paragraph (1) of this subsection, the institution shall submit a request to the Assistant Commissioner of Academic Affairs and Research to add the program. If a proposed program does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the standard degree program request form.

(3) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections occur, the Coordinating Board staff shall update the institution's program inventory accordingly. No new program shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate or degree program at any time to ensure compliance with the any of the criteria outlined in paragraph (1) of this subsection.

(4) An institution requesting a new doctoral program shall submit a proposal using the standard doctoral program request form. All requests for new doctoral programs require preliminary authority prior to the submission of a degree program request.

(b) Requests for new certificate programs shall be made in accordance with the following procedures.

(1) Approval of new undergraduate and graduate certificate programs is automatic if all of the following conditions are met:

(A) The certificate program has institutional and governing board approval.

(B) The institution certifies that adequate funds are available to cover the costs of the new certificate program.

(C) The certificate program meets all other criteria in §5.48 of this title (relating to Criteria for Certificate Programs at Universities and Health-Related Institutions).

(D) No objections to the proposed certificate program are received by the Coordinating Board during the 30-day comment period.

(2) If a proposed certificate program meets the conditions in paragraph (1) of this subsection, the institution shall submit a request to the Assistant Commissioner of Academic Affairs and Research. If a proposed certificate program does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the standard program request form.

(3) The Coordinating Board shall post the proposed program online for public comment for a period of 30 days. If no objections occur, the Coordinating Board staff shall update the institution's program inventory accordingly. No new certificate program shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit a certificate program at any time to ensure compliance with the any of the conditions outlined in paragraph (1) of this subsection.

(c) Requests for administrative changes shall be made in accordance with the following procedures. Administrative changes include the creation of new administrative units - such as colleges, schools, divisions, and departments - as well as changes to existing administrative units, such as a name change, consolidation of existing units, or movement of a program into another unit.

(1) Approval of an administrative change is automatic if all of the following conditions are met:

(A) The administrative change has institutional and governing board approval.

(B) The institution certifies that adequate funds are available to cover the costs of the administrative change.

(C) New costs during the first five years would not exceed $2 million.

(D) The administrative change meets all other criteria in §5.47 of this title (relating to Criteria for Administrative Change Requests).

(E) No objections to the proposed administrative change are received by the Coordinating Board during the 30-day comment period.

(2) If a proposed administrative change meets the conditions in paragraph (1) of this subsection, the institution shall submit a request to the Assistant Commissioner of Academic Affairs and Research to update the administrative structure of the institution. If a proposed administrative change does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the standard administrative change request form.

(3) The Coordinating Board shall post the proposed administrative structure online for public comment for a period of 30 days. If no objections occur, the Coordinating Board staff shall update the institution's administrative unit structure accordingly. No new administrative unit shall be implemented until all objections are resolved. The Coordinating Board reserves the right to audit an administrative unit at any time to ensure compliance with the any of the conditions outlined in paragraph (1) of this subsection.

~~[(b) Requests for new degree and certificate programs and for administrative changes require:]~~

~~[(1) Approval by the Board of preliminary authority, if needed prior to Board consideration; all requests for doctoral programs require preliminary authority prior to Board consideration.]~~

~~[(2) Approval by the governing board of the institution concerned;]~~

~~[(3) Certification of adequate funding by the institution; and]~~

~~[(4) Final approval by the Board, or by the Commissioner if permitted under §5.50 of this title (relating to Approvals by the Commissioner).]~~

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901510
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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19 TAC §5.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §5.52. The new section would require each public institution of higher education to have a process to assess the quality and effectiveness of existing degree programs for continuous improvement. The new section would authorize the Coordinating Board staff to develop a process for conducting a periodic audit of the quality and effectiveness of existing bachelor's and master's programs at public institutions of higher education.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section will be in enabling institutions of higher education to address workforce needs and student demand for new programs more quickly and efficiently. In addition, the public will benefit by the Coordinating Board staff work focusing on the quality of existing degree programs in the state of Texas, rather than on the upfront review. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, Chapter 61, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The new section affects implementation of Texas Education Code, §§61.3021 and 61.304 - 61.319.

§5.52. Assessment of Existing Degree Programs.

(a) In accordance with the requirements of the Southern Association of Colleges and Schools, each public institution of higher education shall have a process to assess the quality and effectiveness of existing degree programs and for continuous improvement.

(b) The Coordinating Board staff shall develop a process for conducting a periodic audit of the quality, productivity, and effectiveness of existing bachelor's and master's programs at public institutions of higher education.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER D. OPERATION OF OFF-CAMPUS EDUCATIONAL UNITS OF PUBLIC SENIOR COLLEGES, UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS

19 TAC §5.78

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.78. The amendments would change the requirement of an off-campus educational unit on the Supply/Demand Pathway of attaining full-time equivalent enrollments of 3,500 from four fall semesters to one semester to become eligible to be a stand-alone institution.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section will be the ability of an off-campus education unit to potentially serve a great number of students by more quickly becoming a stand-alone institution. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to MacGregor Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or macgregor.stephenson@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 the Texas Education Code, Chapter 61, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendments affect implementation of Texas Education Code, §§61.3021 and 61.304 - 61.319.

§5.78. Supply/Demand Pathway.

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

(c) The supply/demand pathway consists of three categories:

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

(3) Category C. After an entity in Category B has attained a full-time equivalent upper-level and graduate enrollment of 3,500 for one [~~four~~] fall semester [~~semesters~~], the parent institution(s) and Board(s) of Regents may request that the Board review the status of the center and recommend that the Legislature reclassify the unit as an upper-level general academic institution--a university. [~~Reclassification may be considered sooner if the center attains a fall semester full-time equivalent enrollment of 3,500 followed the next fall semester by a full-time equivalent enrollment of 4,000.~~] The 3,500 FTSE standard approximates the headcount enrollment included in the current university funding formula as the minimum size needed to achieve economies of scale.

(d) (No change.)

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

Filed with the Office of the Secretary of State on April 21, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

19 TAC §§13.120 - 13.125

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§13.120 - 13.125 regarding Research Development Fund. The proposed revisions are needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Commissioner may require a separate audit to verify the submitted information.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson 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 the section would be increased accuracy in restricted research classification and greater institutional accountability of research awards. An additional benefit would be greater efficiency in administration of the restricted research awards review process. Notably, the current rules call an audit process that has not been implemented because of its high cost and expertise requirements. The revised rules would allow the Review Panel to review and make determinations on restricted research classification of projects submitted by eligible institutions. The current rule requires the Review Panel to only evaluate institution projects greater than $250,000. Increasing the role of the Review Panel would appropriately align the classification process with research experts, rather than institutional internal auditors as currently constructed in rule. Institutions that receive funding under the Research Development Fund would be required to conduct an audit of restricted research expenditures and report their findings to the Coordinating Board in con-

junction with their Annual Financial Report. The Commissioner could also require a separate audit if necessary. There is no effect on small businesses or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Stacey Silverman, Director of Academic Research and Grant Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Stacey.Silverman@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 the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller with verified information regarding the apportionment of the funds to each eligible institution.

The amendments affect implementation of Texas Education Code, Subchapter E, §§62.091 - 62.098.

§13.120. Purpose and Scope.

The purpose of this subchapter is to establish standards and accounting methods for determining restricted research expenditures, [~~the process~~] for reporting [~~of~~] verified restricted research expenditures to the Comptroller of Public Accounts, for reporting how funds were expended during the fiscal year, [~~and the process~~] for auditing [~~audit of~~] the reported restricted research expenditures, and for appealing [~~appeal of~~] decisions relating to restricted research expenditures.

§13.121. Authority.

Texas Education Code, §62.091, establishes the Research Development Fund to promote increased research capacity at eligible general academic teaching institutions. Texas Education Code, §62.096, authorizes the Coordinating Board, with the assistance of an advisory committee, to prescribe standards and accounting methods for determining the amount of restricted research funds expended by an eligible institution in a state fiscal year [~~methods for the verification of allocation factors for the Research Development Fund~~].

§13.122. Definitions.

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

(1) Norman Hackerman Advanced Research Program, [~~/~~] Advanced Technology Program [~~(ARP/ATP)~~]--research programs administered by the Board under Texas Education Code, Chapters 142 and 143.

(2) Advisory committee--The Coordinating Board's Restricted Research Advisory Committee.

(3) - (18) (No change.)

(19) Pass-Throughs to Sub-recipients [~~Subrecipients~~]--external award funds passed from one entity ("pass-through" entity) to another entity sub-recipient [~~(subrecipient)~~]. The sub-recipient [~~subrecipient~~] administers the program, expending the award funds on behalf of or in connection with the pass-through entity.

(20) - (21) (No change.)

(22) Research Development Fund--a method of allocating funds based on institutional restricted research expenditures and [~~fund~~] established outside the state treasury to promote increased research capacity at eligible general academic teaching institutions under Texas Education Code, §§62.091 - 62.098.

(23) (No change.)

(24) Restricted research expenditures--expenditures from restricted funds (restricted awards) used for research and development.

(25) [~~(24)~~] Sponsored Instruction and Training--specific instructional or training activity established by grant, contract, or cooperative agreement with federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored Instruction includes:

(A) any project for which the primary purpose is to instruct any student at any location; recipients of this instruction may be university students or staff, teachers or students in elementary or secondary schools, or the general public, except for those activities defined in paragraph (26) [~~Paragraph (25)~~] of this section;

(B) curriculum development projects at any level either to improve significantly or to add to an institution's general instructional offerings, and do not include R&D;

(C) projects that involve university students in community service activities for which they are receiving academic credit;

(D) activities funded by awards to departments or schools for the support of students, except for those activities defined in paragraph (26)(E) [~~(25)~~] of this section [~~Section~~] as Sponsored R&D;

(E) dissertation work funded by grants, including grants for travel in relation to a dissertation, unless associated with a R&D activity as defined in paragraph (21) of this section [~~Section~~];

(F) outreach programs that bring local students on campus for classes; or

(G) general support for the writing of textbooks or reference books, video, or software to be used as instructional materials.

(26) [~~(25)~~] Sponsored Research and Development (Sponsored R&D)--activity funded (sponsored) by grants, gifts, and/or contracts, including sponsored research contracts, that are designated by the sponsor as primarily for R&D purposes. The activity must be sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals. Sponsored R&D includes:

(A) awards to university faculty to support R&D activities;

(B) external faculty "career awards" to support the R&D efforts of the faculty;

(C) external funding to maintain facilities or equipment and/or operation of a enter or facility that will be used for R&D;

(D) external support for the writing of books, when the purpose of the writing is to publish R&D results;

(E) activities involving the training of individuals in R&D techniques (commonly called R&D training) where such activities utilize the same facilities as other R&D activities and where such activities are not included in the Instruction function;

(F) the research portion of expenditures in the federal work-study program, in accordance with instructions for preparing the

annual financial report that is submitted by an institution to the Comptroller after each fiscal year ends; or

(G) clinical trial agreements in which data collection and analysis are the primary components of the institution's role in the trial, excluding costs that are covered by patient charges or similar sources.

(27) [~~(26)~~] University Research and Development (University R&D)--activity that is supported by unrestricted university funds that the university has designated for use in R&D, such as unrestricted gifts, distributions from unrestricted endowments, interest income, technology licensing income, fees received from external entities for non-research services, proceeds from cost recovery enterprises, state appropriations not identified specifically by the legislature for R&D purposes, non-capitalized allocations from the PUF or HEAF for R&D purposes other than construction and remodeling, state appropriations made directly to the university for R&D through formula or special item funding including Norman Hackerman Advanced Research Program, ATP [~~ARP/ATP~~], or cost-sharing expenditures by the university.

§13.123. Restricted Research Advisory Committee.

The Commissioner shall appoint an advisory committee to review and recommend changes to standards and accounting methods for determining restricted research expenditures.

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

(3) At least 30 days prior to [~~the first~~] meeting [~~each calendar year~~], the Commissioner shall inform the presidents [~~president(s)~~] of [~~a~~] selected institutions [~~institution(s)~~] that they [~~he or she~~] may [~~each~~] recommend an institutional representative to serve [~~fill a vacant position~~] on the advisory committee.

(4) (No change.)

(5) The [~~At its first meeting during each calendar year, the~~] advisory committee shall elect a member to serve as its chair.

(6) (No change.)

§13.124. Standards and Accounting Methods for Determining Restricted Research Expenditures.

(a) Only [~~those~~] expenditures from restricted research awards made from the following types of projects and activities and sponsored by federal, state, or local governmental agencies; private philanthropic organizations and foundations; for-profit businesses; or individuals shall be classified as restricted research expenditures:

(1) Sponsored R&D, as defined in §13.122 of this title (relating to Definitions).

(2) Industrial Collaboration Agreements for R&D activities, as defined in §13.122 of this title [~~(relating to Definitions) with universities, colleges, centers, or institutions~~].

(3) Demonstration Projects, as defined in §13.122 of this title [~~(relating to Definitions)~~], which have a significant new R&D component.

(4) Sponsored instruction and training, as defined in §13.122 of this title [~~(relating to Definitions)~~], for curriculum development projects when the primary purpose of the project is developing and testing an instructional or educational model through appropriate research methodologies that include data collection, evaluation, dissemination, and publication.

(5) Multiple Function Awards, as defined in §13.122 of this title [~~(relating to Definitions),~~] if the scope or activities [~~activity~~] of the restricted awards include [~~award includes~~] R&D, these are subject to the following limitation: if the purpose of a restricted award is primarily (more than 50 percent) research, then all expenditures made from that award qualify as restricted research expenditures. If the purpose of the restricted award is not primarily research (less than 50 percent), then none of the expenditures may be counted as restricted research. Primary purpose will normally be demonstrated by more than half of the funds having been budgeted for research, but may be demonstrated by the sponsor's statement of purpose or other documented evidence.

(b) (No change.)

§13.125. Report on Restricted Research Awards [~~Projects and Activities~~].

(a) Not later than June 30, each eligible institution shall provide to the Commissioner a verified report of all restricted research awards [~~projects and activities~~] for the current state fiscal year [~~specifically identifying awards greater than $250,000 in annual funding~~]. Only those projects or activities described in §13.124 of this title (relating to Standards and Accounting Methods for Determining Restricted Research Expenditures) shall be included in the report.

(1) [~~(b)~~] Classified military projects or any sponsored program deemed confidential or proprietary by funding entities shall not be included in the award lists.

(2) If the project or activity is pursuant to an award from the federal government, it shall be classified by the federal government as R&D.

(3) [~~(c)~~] The report shall be in a format and with the specific content prescribed by the Commissioner.

[~~(d) Only those projects or activities described in §13.124(a) of this title (relating to Standards and Accounting Methods for Determining Restricted Research Expenditures) shall be included in the report.~~]

[~~(e) All projects and activities reported by institutions shall be classified in accordance with these rules and, if the project or activity is pursuant to an award from the federal government, shall be classified by the federal government as R&D~~]

(4) [~~(f)~~] The report shall indicate the person or persons who determined that the projects or activities were restricted research projects or activities.

(5) [~~(g)~~] The Commissioner shall provide the reports made under this section to each eligible institution.

(b) Not later than July 31 of each year, the Commissioner shall convene a review panel of representatives of all eligible institutions. The president of each eligible institution shall recommend the institution's representative on the review panel.

(1) The Commissioner shall provide each review panel member with a copy of each eligible institution's report on restricted research awards.

(2) The review panel shall examine the institutions' reports on restricted research awards and provide a report to the Commissioner, recommending to the Commissioner those awards from which expenditures may be classified as restricted research expenditures.

(3) The Commissioner shall review the report of the review panel and determine those awards from which expenditures may be classified as restricted research expenditures.

(4) Not later than August 15, the Commissioner shall provide each institution with a copy of the recommendations of the review panel and notify each institution of its awards from which expenditures may be classified as restricted research expenditures.

(5) If an institution wishes to appeal the classification of a restricted research award, the President of the institution shall notify the Commissioner, in writing, not later than September 1. The Commissioner will review the appeal, determine whether to re-classify the expenditure, and notify the institution of the decision.

~~[(h) Institutions that fail to provide a report of restricted research projects and activities shall not be eligible for an allocation from the Research Development Fund and shall not be included in the Board's report to the Comptroller.]~~

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

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TRD-200901532
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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19 TAC §§13.126 - 13.130

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§13.126 - 13.130 regarding the Research Development Fund. The proposed repeal of these sections is needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Commissioner may require a separate audit to verify the submitted information.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section would be increased accuracy in restricted research classification and greater institutional accountability of research awards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Stacey Silverman, Director of Academic Research and Grant Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Stacey.Silverman@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal of these sections is proposed under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller of Public Accounts with verified information regarding the apportionment of the funds to each eligible institution.

The repeal of these sections affect implementation of Texas Education Code, Subchapter E, §§62.091 - 62.098.

§13.126. Restricted Research Review Panel.

§13.127. Report of Restricted Research Expenditures.

§13.128. Report to the Comptroller.

§13.129. Reviews and Appeals.

§13.130. Audits.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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19 TAC §13.126, §13.127

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §13.126 and §13.127 regarding the Research Development Fund. The new sections are needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Commissioner may require a separate audit to verify the submitted information.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will

not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stephenson has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section would be increased accuracy in restricted research classification and greater institutional accountability of research awards. An additional benefit would be greater efficiency in administration of the restricted research awards review process. Notably, the current rules call an audit process that has not been implemented because of its high cost and expertise requirements. The revised rules would allow the Review Panel to review and make determinations on restricted research classification of projects submitted by eligible institutions. The current rule requires the Review Panel to only evaluate institution projects greater than $250,000. Increasing the role of the Review Panel would appropriately align the classification process with research experts, rather than institutional internal auditors as currently constructed in rule. Institutions that receive funding under the Research Development Fund would be required to conduct an audit of restricted research expenditures and report their findings to the Coordinating Board in conjunction with their Annual Financial Report. The Commissioner could also require a separate audit if necessary. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Stacey Silverman, Director of Academic Research and Grant Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Stacey.Silverman@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller of Public Accounts with verified information regarding the apportionment of the funds to each eligible institution.

The new sections affect implementation of Texas Education Code, Subchapter E, §§62.091 - 62.098.

§13.126. Reports of Restricted Research Expenditures.

Not later than October 15, each eligible institution shall provide a verified, preliminary report of its restricted research expenditures to the Commissioner. The Preliminary Report will include restricted research expenditures from the awards approved by the Commissioner under §13.125 of this title (relating to Report on Restricted Research Awards).

(1) Expenditures for indirect costs of any restricted research award shall not be included in the Preliminary Report.

(2) Expenditures for pass-throughs to sub-recipients shall not be included in the report.

(3) Not later than November 1 of each fiscal year for which there is an appropriation for the Research Development Fund, the Commissioner shall provide a preliminary restricted research expenditure report to the Comptroller and recommend funding allocations from the Research Development Fund to eligible institutions.

(4) The funds shall be apportioned among the eligible institutions based on the average amount of restricted research funds by each institution per year for the three preceding state fiscal years.

(5) Not later than December 1, and after completion of the institutions' annual financial reports, and revisions based on corrections from audits, each eligible institution shall provide the Commissioner and the Legislative Budge Board with a final report of restricted research expenditures. The Final Report will include a description of research expenditures, including expenditures of funds received during preceding fiscal years.

§13.127. Audits.

The Commissioner may require an audit of the restricted research records of an eligible institution to verify the submitted information.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§13.200 - 13.202 related to the Engineering Recruitment Program (ERP), Engineering Summer Program (ESP), established by the 80th Texas Legislature through passage of House Bill 2798, and codified as Texas Education Code §61.791. These rules describe the ESP grant program, including the establishment of eligibility for the Texas general academic institutions and identification of student populations that are encouraged to participate. The new language for §§13.200 - 13.202 aligns the rules with the statute to clarify that all eligible institutions may receive funding, and amends existing rules to comply with statute by using the term "Engineering Summer Program" instead of "Engineering Summer Camp."

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research has determined that for each year of the first five years the rules are in effect, there are no fiscal implications to state or local government as a result of the proposed rule change.

Dr. Stephenson has determined that for each year of the first five years the rules are in effect, the proposed rule changes do not alter the public benefit or the local employment impact.

Comments on the proposal may be submitted to Reinold Cornelius, Program Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Reinold.Cornelius@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 the Texas Education Code, §61.791(b), which requires the THECB to establish rules for the ESP program.

The amendments affect implementation of Texas Education Code, §61.791 and §61.793.

§13.200. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter Q, Engineering Recruitment Programs. This subchapter establishes rules for administering the engineering [~~recruitment~~] summer program [~~camps~~] as prescribed in the Texas Education Code, §61.791 and §61.793 [~~§§61.791 - 61.793~~].

(b) Scope. Unless otherwise noted, this subchapter applies to [~~any~~] general academic teaching institutions [~~institution~~] (Texas Education Code, §61.003) that offer [~~offers~~] an engineering degree program [~~and their students~~].

(c) Purpose. The purpose of the program [~~these programs~~] is to provide grants to each [~~any~~] general academic teaching institution that offers an engineering degree program to implement a one-week summer program [~~camps~~] for middle and high school students [~~at any general academic teaching institution~~]. Participating students receive instruction in math, science, and engineering concepts, similar to that offered in an engineering degree program.

§13.201. Definitions.

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

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

(3) Eligible institution--Any public general academic teaching institution [~~(public)~~] that offers one or more [~~several undergraduate~~] degree programs in engineering.

[~~(4) Engineering degree program--Any undergraduate degree program in engineering at an eligible institution.~~]

(4) [~~(5)~~] Summer program [~~camp~~]--A math, science, and engineering laboratory-oriented engineering immersion program [~~day camp~~], organized and offered by an eligible institution [~~with one or more one-week sessions, to take place~~] on its [~~the~~] campus [~~of the eligible institution~~].

[~~(6) Proposal--A summer camp proposal written by an eligible institution.~~]

§13.202. Summer Program [~~Camps~~].

(a) A summer program [~~Summer camps~~] shall be designed for middle and/or high school students to [~~that will~~] introduce participants [~~participating students~~] to math, science, and engineering concepts similar to that offered [~~they may encounter~~] in an engineering degree program.

(b) Once every fiscal year, depending on available funding, the Commissioner may authorize distribution of a request for application [~~proposals~~] for the [~~design and implementation of~~] summer program [~~camps~~].

(c) The Board shall post the request for application [~~proposals~~] on the agency website at least 30 working days prior to the due date for submission [~~proposals~~] and shall notify all eligible institutions.

(d) The request for application [~~proposals~~] shall:

(1) require a one-week summer program with a minimum of 36 contact hours per week;

(2) [~~(1)~~] contain information necessary to prepare an application including notification of available [~~proposals~~] including financial resources to be distributed; [~~available for distribution as well as the criteria that will be used for award of grants,~~]

[~~(2) contain data describing the demographics of the state,~~]

(3) require applying [~~the proposal to address plans by the eligible~~] institution to include students who are underrepresented in engineering programs, such as Black, Hispanic, and/or female students; [~~ensure that its summer camp reflects the demographics of the state,~~]

(4) require participants to have [~~include the requirements for admission to a summer camp, including the requirement of~~] an appropriate math and science background according to the skill level of the summer program offered; [~~participating student's grade level and the availability of camp scholarships if needed,~~] and

(5) specify [~~any~~] other grant conditions.

(e) Each eligible institution may submit one application [~~proposal to the Board~~] and the Commissioner shall contract [~~award~~] grants for the summer programs [~~camps~~] based on submitted applications [~~proposals~~] and availability of funding.

(f) All [~~eligible~~] institutions receiving a grant [~~grants~~] for a summer program [~~camps~~] shall submit a final report to the Board within 30 days of the end of the award period. The Commissioner shall specify the format for the report. [~~90 days of the end of the summer camp. The Commissioner shall specify the format for the report.~~]

(g) All institutions receiving a grant for a summer program shall submit a final financial report to the Board within 90 days of the end of the award period. The Commissioner shall specify the format for the report.

(h) [~~(g)~~] After making a finding that an eligible institution has failed to perform or failed to conform to grant conditions, the Commissioner may retract or reduce the grant for the summer program [~~camp~~].

(i) [~~(h)~~] The governing board of each eligible institution shall cooperate with the board in administering this program.

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901513
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.9

The Texas Higher Education Coordinating Board proposes new §21.9 concerning General Provisions. Specifically, the new section would establish procedures by which tuition set-aside funds may be collected for the Texas B-On-Time Loan Program, as required by §56.465 of the Texas Education Code.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined

that for each year of the first five years the new section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of this change will be that the funds that must be made available to the Texas B-On-Time Loan Program will be collected in a timely manner. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, Dan.Weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The new section affects the Texas Education Code, §§56.451 - 56.465.

§21.9. Collection of Tuition Set Aside for Texas B-On-Time Loan Program.

(a) By August 31 of each year the Coordinating Board shall disseminate to institutions of higher education guidelines for calculating the tuition to be set aside during the upcoming academic year for the Texas B-On-Time Loan Program as established in Texas Education Code, §56.465.

(b) By September 30 of each year the Coordinating Board shall:

(1) review data reported to it by institutions of higher education for the prior fiscal year regarding collected resident undergraduate designated tuition charged in excess of $46 per semester credit hour;

(2) compare the amount collected by institutions with the amount deposited in the fund established by Texas Education Code §56.463; and

(3) require institutions to reconcile, by December 31st of the same calendar year, any amounts deposited in the fund that are greater than or less than 5 percent of the amount reported in paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on April 21, 2009.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§21.121, 21.126, 21.131

The Texas Higher Education Coordinating Board proposes amendments to §§21.121, 21.126 and 21.131 concerning the Texas B-On-Time Loan Program. Specifically, the proposed amendment to §21.121 would correct the citation of the authority for the program. Section 21.126(a) references loans disbursed from the proceeds of tax-exempt bonds. This reference specifically applies to the institution certification requirement in §21.126(a)(1). The requirements in §21.126(a)(2) - (5) are relevant to all BOT loans, regardless of the funding source. The proposed amendment would move the tax-exempt bond reference from §21.126(a) to §21.126(a)(1) for clarification. Section 21.126(2) states that a student must submit an application containing the names of two personal references who are gainfully employed. The purpose of providing references on loan applications is to assist Board staff in locating borrowers. The employment status of a reference does not have a bearing on the reference's knowledge of the borrower's whereabouts, and thus this requirement is not useful. The proposed amendment would remove this requirement. Section 21.131 states that each payment received from the borrower will be applied first to any outstanding late charges and collection costs that may have accrued to the account and next to principal of the earliest dated note in the account. The implementation of the Higher Education Loan Management System (HELMS) required a change in the application of loan payments. Although payments continue to be applied first to any outstanding late charges and collection costs, they are then proportionately applied to the principal of each note rather than the earliest dated note. The proposed amendment would be consistent with the current method of payment application and in line with the rules describing the application of payments for loans administered through the Hinson-Hazlewood College Student Loan Program.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of this change will be that the rules will provide clarification of the requirements for disbursing B-On-Time funds and more accurately describe the method by which payments are applied. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, Dan.Weaver@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 the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The amendments affect Texas Education Code, §§56.451 - 56.465.

§21.121. Authority and Purpose.

(a) Authority. Unless otherwise noted in a section, the authority for these provisions is provided by the Texas Education Code, §§56.451 - 56.465 [56.464].

(b) (No change.)

§21.126. Disbursement to Students.

(a) No [In the case of loans made from the proceeds of tax-exempt bonds, no] disbursement shall be made to any student until:

(1) for loans made from the proceeds of tax-exempt bonds, the institution has certified that the amount of the loan does not exceed the difference between the cost of attendance and other forms of student assistance for which the student is eligible, with the exception of Federal Plus loans, whether or not the student actually receives such assistance;

(2) the student has submitted an application containing the names of two personal references who live at different addresses[, who are gainfully employed,] and who are expected to know the student's whereabouts at all times throughout the life of the loan;

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

(b) - (d) (No change.)

§21.131. Repayment of Loans.

(a) - (f) (No change.)

(g) In accordance with the terms of the promissory note, the Commissioner shall determine the priority order in which the payments shall be applied to late charges, collection costs, principal, and any other charges. [Each payment that is received from the borrower to be credited to his or her account will be applied in the following manner:]

[(1) first, to any outstanding late charges and collection costs that may have accrued to the account; and]

[(2) next, to principal of the earliest dated note in the account.]

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2100, §21.2103

The Texas Higher Education Coordinating Board proposes amendments to §21.2100 and §21.2103 concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act). Specifically, the proposed amendment to §21.2100 would delete the definition of "Citizen of Texas." This term does not appear elsewhere in the sections regarding this program and is not needed. The rest of the definitions are renumbered accordingly. The proposed amendments to §21.2103 would clarify the limit to the value of federal benefits a child may receive in order to be eligible for a Hazlewood Act Exemption.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the section is in effect, there will no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis 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 the section will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@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 the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules to provide for the efficient and uniform application of this section.

The amendments affect Texas Education Code, §54.203.

§21.2100. Definitions.

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

(1) - (4) (No change.)

[(5) Citizen of Texas--A person who is a resident of Texas.]

(5) [(6)] Contact hours--A unit of measure that represents an hour of scheduled instruction given to students of which 50 minutes must be of direct instruction. Also referred to as clock hours.

(6) [(7)] Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian in a particular year and in the previous tax year. A veteran was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year.

(7) [(8)] Extraordinary costs--(for community/junior colleges only) tuition and fee costs that exceed the average tuition and fee charges at the institution.

(8) [(9)] Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code, §54.203.

(9) [(10)] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.

(10) [(11)] Identification number--An individual's social security number or school-assigned identification number.

(11) [(12)] Institution--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8).

(12) [(13)] Deposit fees--Fees that an institution may collect under Texas Education Code, §54.502.

(13) [~~(14)~~] 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 and Waiver Programs for Certain Nonresident Persons).

(14) [~~(15)~~] Student service fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061 and 54.513, elect to charge to students to cover the cost of student services.

(15) [~~(16)~~] Training--Time spent as a member of the armed forces that is not included in the "Net Active Service" or the sum of "Net Active Service" indicated on the Certificate of Release or Discharge from Active Duty (DD214).

(16) [~~(17)~~] Tuition--All types of tuition that an institution may, under Texas Education Code, Chapter 54, collect from students attending the institution, including statutory tuition, discretionary tuition, designated tuition, and board-authorized tuition.

§21.2103. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) (No change.)

(2) have no federal veteran's education benefits, based on the death or disability of a veteran parent or, if eligible for federal benefits, [~~and~~] that the value of the benefits is less than the value of the children's tuition and fees less deposit and student service fees for the term in which the exemption is to be used; and

(3) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §22.200

The Texas Higher Education Coordinating Board proposes amendments to §22.200, concerning Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class. Specifically, §22.200 is renamed to more accurately reflect the purpose of the section. The amendments to §22.200(c) would give staff more flexibility in requesting names and addresses of potential scholarship recipients.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the sections will be a greater clarification of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@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 the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

The amendments affect §61.027 and Article III of the General Appropriations Act of the 80th Texas Legislature.

§22.200. Award Amounts and Notification of Potential Recipients [~~Recipient Selection~~].

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

(c) Notification of Potential Recipients [~~Recipient Selection~~]. Each high school will submit names and addresses of [~~applications from~~] students who may be eligible for the scholarship according to criteria developed by Coordinating Board staff. [~~are determined to be ranked in the top 15 percent of their high school graduating class based on the students ranking at the end of his or her sixth semester. Award eligibility will be based on each student's ranking at the end of his or her seventh semester unless an institution of higher education uses a different semester's ranking in determining eligibility for admissions.~~]

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. OBJECTIVE, MISSION, AND PROGRAM

37 TAC §1.4

The Texas Department of Public Safety (Department) proposes amendments to Chapter 1, Subchapter A, §1.4, concerning Programs under Texas Highway Patrol Division.

Amendments to §1.4 are necessary in order to update the rule so that it reflects the revised titles of the division and titles of various services within the division that were changed during a reorganization of the division.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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 that 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.

The Department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Major Ron Joy, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Texas Public Safety Commission (Commission) to adopt rules considered necessary for carrying out the Department's work; and Texas Government Code, §411.006(4), which authorizes the Director of the Department to adopt rules, subject to Commission approval, considered necessary for control of the Department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

§1.4. Programs under Texas Highway Patrol [~~Traffic Law Enforcement~~] Division.

(a) Highway Patrol Service. The program of the Highway Patrol Service is "Police Traffic Supervision and General Law Enforcement on Rural Highways." This program consists of the following major activities:

(1) Police traffic supervision on rural highways:

(A) police traffic direction;

(B) police traffic accident investigation; and

(C) police traffic law enforcement and patrol.

(2) General police work--primarily on rural highways:

(A) criminal law enforcement;

(B) emergencies and disasters; and

(C) security activities.

(b) Commercial Vehicle Enforcement [~~License and Weight~~] Service. The program of the Commercial Vehicle Enforcement [~~License and Weight~~] Service is "The Supervision of Commercial Vehicles, Police Traffic Supervision, and General Law Enforcement on Rural Highways." This program includes the following major activities:

(1) Supervision of commercial vehicle traffic:

(A) assistance to commercial vehicle owners and operators on technical matters;

(B) supervision of motor carrier operations; and

(C) traffic law enforcement on commercial vehicles.

(2) Traffic and criminal law enforcement on rural highways.

(c) Vehicle Inspection Service. The program of the Vehicle Inspection Service is "Vehicle Inspection Station Supervision, Police Traffic Supervision, and General Law Enforcement." This program includes the following major activities:

(1) Inspection station supervision:

(A) station qualification;

(B) station inspection;

(C) station control; and

(D) supervision of emissions testing.

(2) Traffic and criminal law enforcement by vehicle inspection commissioned officers.

[~~(d) Safety Education Service. The program of the Safety Education Service is "Public Safety Education." This program consists of the following major activities:~~]

[~~(1) Public traffic safety education;~~]

[~~(2) Public education in crime prevention and safety related matters;~~]

[~~(3) Public information;~~]

[~~(4) Cooperation with and assistance to other agencies; and~~]

[~~(5) Traffic and criminal law enforcement.~~]

(d) [~~(e)~~] Bureau of Law Enforcement Communications and Technology [~~Communications Service~~]. The program of the Bureau of Law Enforcement Communications and Technology [~~Service~~] is "Police Communication and Technology Support." This program consists of the following activities:

(1) Police Communications:

(A) [~~(1)~~] Transmission and receipt of department messages;

(B) [~~(2)~~] Transmission and receipt of emergency-type messages for other police agencies; and

(C) [~~(3)~~] Other special assistance to other departments and agencies.

(2) Communication Frequency and Interoperability:

(A) Radio Frequency planning and coordination internally and interoperability with other agencies.

(B) Radio and video technical maintenance and repair.

(3) Mobile Technology and Information-Responsible for Mobile Technology and Communications Infrastructure Support.

(e) [~~(f)~~] General Obligations. Personnel of all services, agencies, and units in the department are subject to assignment by the director to perform in any program or activity when he deems such assignments necessary.

(f) [~~(g)~~] Motor Carrier Bureau. The program of the Motor Carrier Bureau is to provide administrative support applicable to the Commercial Vehicle Enforcement [~~License and Weight~~] Service relative to motor carrier safety issues. This program consists of the following sections.

(1) The Motor Carrier Safety Section will provide the support to administer the Motor Carrier Safety Requirements.

(2) The Motor Carrier Records Section maintains all activity reports submitted by the Commercial Vehicle Enforcement [~~License and Weight~~] Service.

(3) The Motor Carrier Compliance Audit Section performs the administrative function of the enforcement of the Motor Carrier Safety and Hazardous Materials Regulations.

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901569
Stanley E. Clark
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 424-2135

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SUBCHAPTER D. PUBLIC INFORMATION POLICIES

37 TAC §1.58

The Texas Department of Public Safety proposes amendments to Chapter 1, Subchapter D, §1.58, concerning Release of Information on Crash Victims.

Amendments to §1.58 are necessary in order to update the rule so that it reflects the revised wording of "crash" as it relates to motor vehicle collisions which replaced the terminology "accident" previously used.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Major Ron Joy, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of the department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

§1.58. Release of Information on Crash [~~Accident~~] Victims.

It is highly desirable to notify next of kin of the death or serious injury of a crash [~~an accident~~] victim before releasing the name to the news media. However, department officers will not withhold, nor advise other officials to withhold names of such victims from the news media representatives once the identities of the victims have been fully established. In such cases the officer will advise the media representatives that the next of kin have not been notified, leaving usage up to them.

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

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Stanley E. Clark
Director
Texas Department of Public Safety
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SUBCHAPTER I. FEES FOR COPIES OF RECORDS

37 TAC §1.129

The Texas Department of Public Safety proposes amendments to Chapter 1, Subchapter I, §1.129, concerning Fees for Sale of Motor Vehicle Crash Reports in Highway Patrol Field Offices.

Amendments to §1.129 are necessary in order to update the rule so that it reflects the revised wording of "crash" as it relates to motor vehicle collisions which replaced the terminology "accident" previously used.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Major Ron Joy, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of the department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

§1.129. Fees for Sale of Motor Vehicle Crash [~~Accident~~] Reports in Highway Patrol Field Offices.

(a) Reproduction of approved field copies of Department of Public Safety investigated motor vehicle crash [~~accident~~] reports will be furnished upon written request in all field offices where adequate clerical support exists and reproduction equipment is available.

(b) Persons or firms desiring reproduction of motor vehicle crash [~~accident~~] reports from field office files will request them in person and submit a written request. If the desired report is available it will be reproduced and furnished upon payment of the statutory fee in the form of a personal check, money order, or cashiers check. Copies of each motor vehicle crash [~~accident~~] report purchased in a highway patrol field office will be stamped "Field Copy--Not From Custodial File."

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

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Stanley E. Clark
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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SUBCHAPTER W. SENATE BILL 1074 VIDEO UNITS

37 TAC §§1.281 - 1.285

(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 Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Chapter 1, Subchapter W, §§1.281 - 1.285, concerning Senate Bill 1074 Video Units. Repeal of the sections is necessary due to the sections no longer being necessary. This subchapter pertains to the regulation of a contract for video units in 2002 that no longer exists.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There are no anticipated economic costs to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to these repeals. Accordingly, the Department is not required to complete a takings impact assessment regarding these repeals.

Comments on the repeals may be submitted to Major Ron Joy, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the Director to adopt rules, subject to commission approval, considered necessary for control of the department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

§1.281. Definitions.

§1.282. Criteria for Applicants and the Application.

§1.283. Source of Funds for Video Units.

§1.284. Administration and Rules of the Voucher System.

§1.285. Order in Which Vouchers will be Awarded.

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

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901572
Stanley E. Clark
Director
Texas Department of Public Safety
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 424-2135

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CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §14.52(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 8, 2009, issue of the Texas Register.)

The Texas Department of Public Safety proposes to amend Chapter 14, Subchapter D, §14.52, concerning Texas School Bus Specifications. Amendment to §14.52 is necessary in order to update the rule so that it reflects the 2009 Texas School Bus Specifications as the current publication.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

The Department has determined that this proposal is not a "major environmental rule" as defined by Governmental Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The Department has determined that Chapter 2007 of the Governmental Code does not apply to this rule. Accordingly, the Department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; and Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

Texas Government Code, §411.004(3); Texas Education Code, §34.002; and Texas Transportation Code, §547.102 and §547.7015 are affected by this proposal.

§14.52. Texas School Bus Specifications.

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the Texas School Bus Specifications for 2009 [~~2008~~] Model School Buses. Previously published Texas School Bus Specifications remain in effect for earlier model year school buses until the department repeals these publications.
Figure: 37 TAC §14.52(a)

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Title 49, Code of Federal Regulations, Part 571.

(1) A multifunction school activity bus may be painted any color except National School Bus Glossy Yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat

stating: "This vehicle is not to be used for home to school or school to home transportation".

(c) Any new school bus found out of compliance with the specifications that were in effect in Texas on the date the vehicle was manufactured will be placed out of service by the vehicle's owner until it is brought into compliance with the applicable specifications.

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

Filed with the Office of the Secretary of State on April 27, 2009.

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Stanley E. Clark
Director
Texas Department of Public Safety
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) proposes amending the title of Chapter 813, Food Stamp Employment and Training, to Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

The Commission proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training:

Subchapter A. General Provisions, §§813.1 - 813.3

Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11 - 813.14

Subchapter C. Expenditure of Funds, §813.22

Subchapter D. Allowable Activities, §813.31 and §813.32

Subchapter E. Support Services for Participants, §813.41

The Commission proposes the following new sections to Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training:

Subchapter A. General Provisions, §813.4 and §813.5

Subchapter D. Allowable Activities, §813.33 and §813.34

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 813 rule change is to:

--implement new job retention services and support services;

--detail the requirements for documentation, verification, and supervision of work activities to further align with Choices services;

--specify when good cause must be determined; and

--make necessary technical corrections and clarifications, including changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

The Food, Conservation, and Energy Act of 2008 (FCEA), enacted June 18, 2008, amended the Food Stamp Act of 1977, now named the Food and Nutrition Act of 2008. Among the changes, states have been given the option of providing job retention services and support services.

In accordance with 7 U.S.C. §2015(d)(4)(B)(vii) and 7 U.S.C. §2025(h)(3), the Commission has amended the Federal Fiscal Year 2009 (FFY'09) FSE&T State Plan to implement job retention services and support services effective FFY'09. The job retention policies outlined in the FFY'09 FSE&T State Plan amendment have been approved by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS).

Guidance received from FNS permits states to provide additional support services not allowed in prior years. Chapter 813 has been amended to include this change.

Because of the Commission's commitment to align Choices and SNAP E&T to the extent allowed under federal law, requirements for documentation, verification, and supervision of work activities are included in this chapter.

Also enacted under FCEA, the name of the Food Stamp Program was changed to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal Food Stamp Program, has informed the Agency that effective April 1, 2009, it also will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission will change the name FSE&T to SNAP E&T. This name change is made throughout the proposed rules in addition to other technical corrections and changes made to simplify and clarify rule language.

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:

§813.4. Board Policies and Local Procedures

New §813.4 sets forth the requirements for the development of Board policies and local procedures.

To ensure consistency of the methods and amounts of work-related and housing assistance disbursed to SNAP recipients, and assist Boards with the management of SNAP E&T 50/50 percent funds, new §813.4(a)(1) - (2) requires Boards to establish policies and procedures regarding the methods and limitations for the provision of support services, specifically work-related expenses and housing assistance.

New §813.4(b) incorporates the contents of removed §813.11(g), which provides that Boards may establish optional policies that require the use of Eligible Training Provider System (ETPS) and Individual Training Accounts (ITAs), as set forth in Chapter 841 of this title relating to the Workforce Investment Act, to provide SNAP E&T funded services for SNAP E&T participants.

New §813.4(c) requires Boards that establish the optional policies described in §813.4(b) to develop corresponding procedures.

§813.5. Documentation, Verification, and Supervision of Work Activities

New §813.5 aligns SNAP E&T with Choices requirements for the documentation, verification, and supervision of all SNAP E&T work activities.

Section 813.5(a) states that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in the section, must be documented in The Workforce Information System of Texas (TWIST).

Section 813.5(b) requires that all participation in SNAP E&T must be verified and documented and that self-attestation must not be allowed.

Section 813.5(c) requires that all participation in the activity described in §813.31(5) must be verified and documented in TWIST at least monthly.

Section 813.5(d)(1) - (2) requires that all participation in the activities described in §813.31(1) and (4) and §813.32(a)(4) must be supervised daily and verified and documented in TWIST at least monthly.

Section 813.5(e)(1) - (2) requires that for the activities described in §813.31(2) and (3):

--no more than one hour of unsupervised study or homework time per each hour of class time must be counted toward participation in SNAP E&T; and

--all study and homework time in excess of one hour per hour of class time must be directly monitored, supervised, verified, and documented.

Section 813.5(e)(3)(A) - (B) requires that study or homework time must only count toward participation in SNAP E&T if:

--the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and

--the educational institution's policy requires a certain number of out-of-class preparation hours for the class.

Section 813.5(e)(4) requires that good or satisfactory progress, as determined by the educational institution, must be verified and documented in TWIST at least monthly.

Section 813.5(e)(5) requires that all participation in SNAP E&T must be supervised daily.

Section 813.5(e)(6) requires that all participation in SNAP E&T must be verified and documented in TWIST at least monthly.

Certain paragraphs in this subchapter have been renumbered to accommodate the name change to SNAP E&T.

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

The Commission proposes the following amendments to Subchapter B:

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services

Section 813.11(g), providing Boards the option to require the use of ETPS and ITAs, is removed and incorporated in §813.4(b).

§813.13. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services

During the policy concept phase of the rulemaking process, the Commission received a comment noting that SNAP *Employment and Training: A Comprehensive Guide* states that mandatory work registrants can claim good cause before or after a penalty has been initiated in TWIST, as long as the penalty has not been imposed by HHSC.

The Commission agrees and appreciates the comment. To ensure clarity of the Commission's intent that good cause be determined before SNAP benefits are denied, §813.13(a)(1) - (2) adds language to specify that good cause must be determined when:

--mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and

--mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.

SUBCHAPTER C. EXPENDITURE OF FUNDS

The Commission proposes the following amendments to Subchapter C:

§813.22. Use of Funds

Section 813.22(1)(A) - (B) is reorganized for better clarity and adds the phrase "exempt recipients who voluntarily participate" to specify that SNAP E&T funds also can be used to provide SNAP E&T services to volunteers. In March 2005, the Commission amended Chapter 813 to allow Boards the flexibility to expand SNAP E&T services statewide to include volunteers. However, the Commission postponed amending this section until certain 50/50 funding issues were resolved.

Section 813.22(2) clarifies that only SNAP E&T 50/50 funds can be used to provide SNAP E&T support services listed in §813.41.

New §813.22(3) provides that job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and must be funded with 100 percent funds or 50/50 funds, or both. USDA guidance allows states that elect to provide job retention services to use their 100 percent and 50/50 funds to administer these services.

New §813.22(4) provides that job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and must be funded with 50/50 funds.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§813.33. Job Retention Activities

New §813.33(a)(1) - (3) allows Boards to provide job retention activities:

--similar to the SNAP E&T activities in §813.31(1) - (3), and as specified in the annual SNAP E&T state plan of operations, and any subsequent amendments, approved by USDA;

--for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and

--in full-service or minimum-service counties as funding permits.

New §813.33(b) requires Boards to ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services

New §813.34(1) - (2) allows Boards to provide job retention support services for up to 90 days to assist:

--mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and

--exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

The Commission proposes the following amendments to Subchapter E:

§813.41. Provision of SNAP E&T Support Services

Section 813.41(a)(1)(B), prohibiting the provision of support services to mandatory work registrants for the purpose of retaining employment, is removed. As provided in new §813.34(a)(1), Boards may provide job retention support services for up to 90 days to assist mandatory work registrants with retaining employment.

Section 813.41(a)(2)(B), prohibiting the provision of support services to exempt recipients for the purpose of retaining employment, is removed. As provided in new §813.34(a)(2), Boards may provide job retention support services for up to 90 days to assist exempt recipients with retaining employment.

Section 813.41(b)(3) removes the term "work" and incorporates it into new §813.41(b)(4).

New §813.41(b)(4)(A) - (B) adds that support services include payment or reimbursement for work-related expenses that are:

--reasonable, necessary, and directly related to accepting or retaining employment; and

--paid for based on methods and amounts established in Boards' local policies and procedures.

New §813.41(b)(5) adds that support services include payment or reimbursement for housing expenses that are:

--reasonable, necessary, and directly related to SNAP E&T participation or retaining employment; and

--paid for based on methods and amounts established in Boards' local policies and procedures.

Certain subparagraphs in this subchapter have been renumbered to accommodate additions or deletions.

SUBCHAPTER F. COMPLAINTS AND APPEALS

The Commission proposes the following amendment to Subchapter F:

A technical correction is made to the title of Subchapter F, which is changed from "Complaints and Appeals" to "Complaints." Requirements related to appeals previously contained in Chapter 813 were removed in 2007 and moved to new Chapter 823, Integrated, Complaints, Hearings, and Appeals.

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 local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs 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, including child care providers.

The reasoning that led to these conclusions for the following changes is as follows:

In authorizing and implementing new job retention services and support services; detailing the requirements for documentation, verification, and supervision of work activities; and making various other specifications and technical corrections and clarifications, these rules are not imposing on Boards or service providers such requirements or mandates that will require significant increased costs over current levels. Indeed, various clarifications and specification of documentation, verification, and supervision required in program regulations, as well as expansion of authority to provide job retention services will keep the program functioning in concert with the federal program requirements and should enhance the effectiveness of the program.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, 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 provide activities and support services in a more consistent manner to meet the needs of SNAP recipients in order to help them become self-sufficient and independent of public assistance, and to provide employers with a skilled workforce.

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 January 6, 2009. The Commission also conducted a conference call with Board executive directors and Board staff on January 9, 2009, 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. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§813.1 - 813.5

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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.1. Purpose.

The purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) [~~Food Stamp Employment and Training (FSE&T)~~] activities and support services is to assist SNAP [~~food stamp~~] recipients who are not receiving Temporary Assistance for Needy Families in entering employment through participation in allowable job search, training, education, or workfare activities that promote self-sufficiency. These rules may be cited as the SNAP E&T [~~FSE&T~~] rules.

§813.2. Definitions.

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

(1) ABAWD--a SNAP [~~food stamp~~] household member who is determined by the Texas Health and Human Services Commission to be a mandatory work registrant and is:

(A) classified as an able-bodied adult;

(B) at least 18 but less than 50 years of age;

(C) without dependents; and

(D) subject to a limitation on the receipt of SNAP [~~food stamp~~] benefits for three months out of 36 months if the person does not work at least 20 hours per week or participate in employment and training activities as specified in 7 U.S.C. §2015(o)(2)(A) - (B).

(2) Exempt recipient--an individual who is part of the General Population, is not required to participate in SNAP E&T [~~FSE&T~~] services, as set forth in 7 U.S.C. §2015(d)(2), and shall not be sanctioned for failure to cooperate with SNAP E&T [~~FSE&T~~] requirements as set forth in §813.12 of this chapter.

~~[(3) FSE&T activities--Food Stamp Employment and Training activities as specified in §813.31 of this chapter.]~~

~~[(4) FSE&T support services--Food Stamp Employment and Training support services as specified in §813.41 of this chapter.]~~

(3) [~~(5)~~] Full-service counties--counties in which Boards ensure that:

(A) ABAWDs, who are not working at least 20 hours per week, are outreached and receive SNAP E&T [~~FSE&T~~] services;

(B) the SNAP E&T [~~FSE&T~~] General Population receives SNAP E&T [~~FSE&T~~] services based on available funding;

(C) mandatory work registrants shall be sanctioned (i.e., SNAP [~~food stamp~~] benefits are denied) for failure to cooperate with SNAP E&T [~~FSE&T~~] requirements; and

(D) exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services shall not be sanctioned for failure to cooperate with SNAP E&T [~~FSE&T~~] requirements.

(4) [~~(6)~~] General Population--a mandatory or exempt SNAP [~~food stamp~~] household member who is:

(A) at least 16 but less than 60 years of age; and

(B) not classified as an ABAWD.

(5) [~~(7)~~] HHSC--the Texas Health and Human Services Commission.

(6) [~~(8)~~] Mandatory work registrant--a SNAP [~~food stamp~~] household member who is required to register for SNAP E&T [~~FSE&T~~] services, and is:

(A) classified as General Population; or

(B) an ABAWD.

(7) [~~(9)~~] Minimum-service counties--counties in which:

(A) SNAP [~~food stamp~~] recipients (i.e., mandatory or exempt) may volunteer to participate in SNAP E&T [~~FSE&T~~] services;

(B) Boards may provide services to SNAP [~~food stamp~~] recipients based on available funds;

(C) outreach is not conducted; and

(D) SNAP [~~food stamp~~] recipients (i.e., mandatory or exempt) who voluntarily participate in SNAP E&T [~~FSE&T~~] services shall not be sanctioned for failure to cooperate with SNAP E&T [~~FSE&T~~] requirements.

(8) [~~(10)~~] Nonprofit organization--any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

(9) SNAP E&T activities--Supplemental Nutrition Assistance Program Employment and Training activities as specified in §813.31 of this chapter.

(10) SNAP E&T support services--Supplemental Nutrition Assistance Program Employment and Training support services as specified in §813.41 of this chapter.

(11) Volunteer--an individual who is not required to participate, but who voluntarily participates, in SNAP E&T [~~FSE&T~~] services, including:

(A) exempt recipients in full-service counties; and

(B) exempt recipients and mandatory work registrants in minimum-service counties.

(12) Workfare--a work-based activity that consists of placement of an ABAWD with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an ABAWD's monthly household SNAP [~~food stamp~~] allotment amount divided by the federal minimum wage.

§813.3. General Board Responsibilities.

(a) Role of Boards. A Board shall:

(1) ensure that SNAP [~~food stamp~~] eligibility is verified monthly before providing SNAP E&T [~~FSE&T~~] services for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services; and

(2) ensure that mandatory work registrants, and exempt recipients who volunteer, participate in allowable SNAP E&T [~~FSE&T~~] activities. The allowable activities shall meet the needs of employers and prepare the mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services for unsubsidized employment.

(b) Board Planning. A Board shall develop, amend, and modify its integrated workforce training and services plan to incorporate and coordinate the design and management of the delivery of SNAP E&T [~~FSE&T~~] activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §§2308.301 - 2308.3165 as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title (relating to Local Workforce Development Boards).

(c) Board Management. Pursuant to this chapter, and Chapter 801 of this title (relating to Local Workforce Development Boards), a Board shall coordinate workforce employment, training, and educational services that meet the needs of employers for its local workforce development area and shall incorporate and coordinate the management and strategy for SNAP E&T [~~FSE&T~~] activities and support services into the comprehensive One-Stop Service Delivery Network provided to help low-income families as they move toward self-sufficiency.

(d) Coordination with HHSC. A Board shall coordinate with HHSC on a regular and ongoing basis, as determined by the Board, regarding referrals, good cause, sanction procedures, and fair hearings or appeals.

§813.4. Board Policies and Local Procedures.

(a) A Board shall establish policies and procedures regarding the methods and limitations for the provision of the following:

(1) Work-related expenses; and

(2) Housing assistance.

(b) A Board may establish optional policies that require the use of the Eligible Training Provider System and Individual Training Accounts, as set forth in Chapter 841 of this title (relating to the Workforce Investment Act), to provide SNAP E&T-funded services for SNAP E&T participants.

(c) If a Board establishes the optional policies described in subsection (b) of this section, the Board shall ensure that corresponding procedures are developed for the policies.

§813.5. Documentation, Verification, and Supervision of Work Activities.

(a) A Board shall ensure that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).

(b) A Board shall ensure that all participation in SNAP E&T is verified and documented and that self-attestation is not allowed.

(c) For the activity described in §813.31(5) of this chapter, Boards shall ensure that all participation is verified and documented in TWIST at least monthly.

(d) For the activities described in §813.31(1) and (4) and §813.32(a)(4) of this chapter, Boards shall ensure that all participation is:

(1) supervised daily; and

(2) verified and documented in TWIST at least monthly.

(e) For the activities described in §813.31(2) and (3) of this chapter, Boards shall ensure that:

(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward participation in SNAP E&T;

(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;

(3) study or homework time is only counted toward participation in SNAP E&T if:

(A) the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;

(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;

(5) all participation in SNAP E&T is supervised daily; and

(6) all participation in SNAP E&T is verified and documented in TWIST at least monthly.

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

Filed with the Office of the Secretary of State on April 21, 2009.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 475-0829

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SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

40 TAC §§813.11 - 813.14

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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.11. Board Responsibilities Regarding Access to SNAP E&T [~~FSE&T~~] Activities and Support Services.

(a) A Board shall ensure that allowable SNAP E&T [~~FSE&T~~] activities and support services, as set forth in Subchapters D and E, respectively, of this chapter, are provided as specified in the annual state plan of operations approved by the United States Department of Agriculture (USDA), to individuals who are:

(1) classified as the General Population; or

(2) ABAWDs.

(b) A Board shall ensure that the monitoring of SNAP E&T [~~FSE&T~~] requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:

(1) tracking and reporting SNAP E&T [~~FSE&T~~] participation hours;

(2) tracking and reporting support services hours;

(3) determining and arranging for any intervention needed to assist the individual in complying with SNAP E&T [~~FSE&T~~] service requirements;

(4) ensuring progress toward achieving the goals and objectives in the employment plan; and

(5) monitoring all other requirements.

(c) A Board shall ensure that all ABAWDs in full-service SNAP E&T [~~FSE&T~~] counties are provided with an offer of a work activity within 10 calendar days from the date of referral from HHSC.

(d) A Board shall ensure that HHSC is notified in a timely manner if a mandatory work registrant fails to comply with participant responsibilities, as set forth in §813.12 of this subchapter.

(e) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) (29 U.S.C. §201 et seq.) as follows:

(1) the amount of time per week that a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the SNAP [~~food stamp~~] benefits amount being divided by the minimum wage, so that the amount paid to the mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and

(2) if a Board provides activities that meet all the following criteria set forth in this paragraph, the activity is considered "training" under FLSA and minimum wage and overtime are not required:

(A) The training is similar to that given in a vocational school.

(B) The training is for the benefit of the trainees.

(C) Trainees do not displace currently employed workers.

(D) Employers derive no immediate advantage from trainees' activities.

(E) Trainees are not entitled to a job after training is completed.

(F) Employers and trainees understand that trainees are not paid.

(f) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.

~~[(g) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System and Individual Training Accounts as described in Chapter 841 of this title (relating to Workforce Investment Act) to provide services for individuals participating in FSE&T and which are funded by FSE&T.]~~

§813.12. Participant Responsibilities.

Mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services shall:

(1) attend scheduled appointments;

(2) participate in assigned SNAP E&T [~~FSE&T~~] activities for at least a minimum weekly average of 30 hours, within the restrictions set forth in §813.14 of this subchapter;

(3) report to an employer to whom they are referred;

(4) accept a job offer; and

(5) report activity hours, including hours of employment.

§813.13. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T [~~FSE&T~~] Services.

(a) Good cause applies only to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services. A Board shall ensure that good cause is determined before SNAP benefits are denied when: [~~as provided in this chapter.~~]

(1) mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and

(2) mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.

(b) A Board shall ensure that a good cause determination:

(1) is based on individual and family circumstances;

(2) is based on face-to-face or telephone contact;

(3) includes a temporary period when mandatory work registrants or exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services may be unable to attend scheduled appointments or participate in ongoing work activities; and

(4) is made at the time the change in circumstances is made known to the Board's service provider.

(c) For purposes of this chapter, the following reasons constitute good cause:

(1) temporary illness or incapacitation;

(2) court appearance;

(3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;

(4) no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board;

(5) distance from the home of the mandatory work registrant, or exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services, to the Texas Workforce Center or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), and the distance prohibits walking and there is no available transportation;

(6) farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date the individual notified the Board of his or her seasonal farmwork assignment;

(7) an inability to obtain needed child care, as defined by the Board and based on the following reasons:

(A) informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent;

(B) eligible formal child care providers, as defined in Chapter 809 of this title (relating to Child Care Services [~~and Development~~]), are unavailable;

(C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and

(D) formal or informal child care within a reasonable distance from home or the work site is unavailable;

(8) an absence of other support services necessary for participation;

(9) receipt of a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(10) an individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided the mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services, engages in problem resolution through appropriate referrals for counseling and support services; or

(11) an individual is a victim of family violence.

(d) A Board shall ensure that good cause:

(1) is reevaluated at least on a monthly basis;

(2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and based on the existence of family violence, does not exceed a total of 12 consecutive months per occurrence.

§813.14. Special Provisions Regarding Sanctions for Noncooperation.

General population mandatory work registrants who are scheduled to participate more than 120 hours per month may not be sanctioned for noncooperation after 120 hours have been reached, as described in the Food and Nutrition Act [~~Food Stamp Act~~], 7 U.S.C. §2015(d)(4)(F)(ii). The 120 hours include hours in all SNAP E&T [~~FSE&T~~] activities, including any hours worked for paid or unpaid compensation.

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901499
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 475-0829

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SUBCHAPTER C. EXPENDITURE OF FUNDS

40 TAC §813.22

The rule is 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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.22. Use of Funds.

Boards shall ensure that the following funding provisions are followed:

(1) The following SNAP E&T grant funds shall be expended on SNAP E&T activities for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T activities listed in §813.31 and §813.32 of this chapter: [~~Regarding the 100% federal E&T grant (100% funds) and the 50% federal and 50% state E&T grant (50/50 funds), federal E&T grant funds shall be expended on E&T activities for mandatory work registrants to participate in E&T activities listed in §813.31 and §813.32 of this chapter.~~]

(A) 100 percent federal SNAP E&T grant and 100 percent federal ABAWD-only grant (100 percent funds)

(B) 50 percent federal SNAP E&T grant and 50 percent state SNAP E&T grant (50/50 funds)

(2) SNAP E&T-funded [~~Food Stamp E&T funded~~] support services, listed in §813.41 of this chapter [~~title~~], shall [~~may only~~] be funded only with 50/50 funds [~~and not 100% funds~~].

(3) Job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and shall be funded with one or both of the following:

(A) 100 percent funds

(B) 50/50 funds

(4) Job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and shall be funded with 50/50 funds.

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901500
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 475-0829

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SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §§813.31 - 813.34

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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T [~~FSE&T~~] Services.

The following activities may be provided for SNAP E&T [~~FSE&T~~] mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services, subject to the limitations specified in §813.32 of this subchapter:

(1) job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

(i) job skills assessment;

(ii) counseling;

(iii) job search skills training;

(iv) information on available jobs;

(v) occupational exploration, including information on local emerging and demand occupations;

(vi) interviewing skills and practice interviews;

(vii) assistance with applications and resumes;

(viii) job fairs;

(ix) life skills; or

(x) guidance and motivation for development of positive work behaviors necessary for the labor market; and

(B) limit the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services can spend as follows:

(i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, as described in §813.32(a)(4)(D) of this subchapter.

(ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services shall not be enrolled:

(I) for more than four weeks of consecutive activity under this paragraph;

(II) for more than six weeks of total activity in a federal fiscal year.

(iii) Job search, when offered as part of other SNAP E&T [~~FSE&T program~~] activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph if the job search activities comprise less than half of the required time spent in other activities.

(2) vocational training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) nonvocational education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

(i) a secondary school; or

(ii) a course of study leading to a high school diploma or a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, career school or college, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) work experience, as authorized by 7 U.S.C. §2015(d)(4)(B)(iv) and by the Workforce Investment Act in 20 C.F.R. §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills, that shall:

(A) occur in the workplace for a limited period of time;

(B) be made in either the private for-profit, the nonprofit, or the public sectors; and

(C) be paid or unpaid;

(5) unsubsidized employment; or

(6) other activities approved in the current SNAP E&T [~~FSE&T~~] state plan of operations.

§813.32. SNAP E&T [~~FSE&T~~] Activities for ABAWDs.

(a) Boards shall ensure that SNAP E&T [~~FSE&T~~] activities for ABAWDs are limited to participating in the following:

(1) services or activities under the Trade Act of 1974, as amended by the Trade Act of 2002;

(2) activities under the Workforce Investment Act (29 U.S.C. §2801, et seq.);

(3) education and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) workfare activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP [~~food stamp~~] allotment divided by the number of ABAWDs in the SNAP [~~food stamp~~] household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period prior to placement in a workfare activity.

(b) Boards shall ensure that ABAWDs who are referred to a Texas Workforce Center and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T [~~FSE&T~~] services because they have fulfilled their work requirement, as described in 7 U.S.C. §2015(o)(2)(A). In addition, Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

§813.33. Job Retention Activities.

(a) Boards may provide job retention activities:

(1) similar to the SNAP E&T activities described in §813.31(1) - (3) of this subchapter, and as specified in the annual SNAP E&T state plan of operations and any subsequent amendments approved by USDA;

(2) for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and

(3) in full-service or minimum-service counties as funding permits and as specified in paragraphs (1) and (2) of this subsection.

(b) Boards shall ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services.

Boards may provide job retention support services for up to 90 days to assist:

(1) mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and

(2) exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

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

Filed with the Office of the Secretary of State on April 21, 2009.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: June 7, 2009
For further information, please call: (512) 475-0829

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SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

40 TAC §813.41

The rule is 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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.41. Provision of SNAP E&T [~~FSE&T~~] Support Services.

(a) Boards shall ensure that SNAP E&T [~~FSE&T~~] support services are provided to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services, if the support services are reasonable, necessary, and directly related to participation in SNAP E&T [~~FSE&T~~] activities, as follows:

(1) Mandatory Work Registrants. Boards shall ensure that:

(A) support services are [~~only~~] provided to assist mandatory work registrants with participation in SNAP E&T [~~FSE&T~~] activities and in obtaining employment; and

[~~(B) support services shall not be provided to assist mandatory work registrants in retaining employment; and~~]

(B) [~~(C)~~] if the monthly expenses directly related to participation by a mandatory work registrant exceed available funds, the mandatory work registrant is:

(i) exempted from further participation in an assigned SNAP E&T [~~FSE&T~~] activity; or

(ii) reassigned to a SNAP E&T [~~an FSE&T~~] activity that will not require the provision of support services.

(2) Exempt Recipients Who Voluntarily Participate in SNAP E&T Activities [~~FSE&T Services~~]. Boards shall ensure that:

(A) support services are [~~only~~] provided to assist exempt recipients with participation in SNAP E&T [~~FSE&T~~] activities and in obtaining employment; and

[~~(B) support services shall not be provided to assist exempt recipients in retaining employment; and~~]

(B) [~~(C)~~] if the monthly expenses directly related to participation for an exempt recipient who voluntarily participates in SNAP E&T [~~FSE&T~~] services exceed available funds, the exempt recipient is:

(i) informed that assigned activities will be discontinued; or

(ii) reassigned to a SNAP E&T [~~an FSE&T~~] activity that will not require the provision of support services.

(b) Support services include payment or reimbursement for:

(1) child care services governed by Chapter 809 of this title;

(2) transportation services that may be provided for participating mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T [~~FSE&T~~] services, if alternative transportation resources are not available to the participants. Boards shall ensure that costs to provide the transportation services are:

(A) reasonable and necessary for participation in SNAP E&T [~~FSE&T~~] activities; and

(B) paid for based on the methods and amounts determined by each Board to be consistent with state policy that requires use of the most economical means of transportation to meet the SNAP E&T [~~FSE&T~~] participant's needs; [~~and~~]

(3) [~~work,~~] training[~~,~~] or education-related items:

(A) including, but not limited to, costs for uniforms, personal safety items, or other necessary equipment, and books or training manuals provided; and

(B) excluding the cost of meals away from home;[~~,~~]

(4) work-related expenses that are:

(A) reasonable, necessary, and directly related to accepting or retaining employment such as tools, uniforms, equipment, transportation, and car repairs; and

(B) paid for based on methods and amounts established in Boards' local policies and procedures; and

(5) housing expenses that are:

(A) reasonable, necessary, and directly related to participation in SNAP E&T activities or retaining employment such as assistance with rent or utility payments; and

(B) paid for based on methods and amounts established in Boards' local policies and procedures.

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

Filed with the Office of the Secretary of State on April 21, 2009.

TRD-200901502
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§34.22 - 34.27

The Texas Ethics Commission withdraws the proposed new §§34.22 - 34.27 which appeared in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1496).

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901543
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: April 24, 2009
For further information, please call: (512) 463-5800

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE

SUBCHAPTER E. SERVICE REQUIREMENTS

40 TAC §47.63

The Department of Aging and Disability Services withdraws the proposed amendment to §47.63 which appeared in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8748).

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901546
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 24, 2009
For further information, please call: (512) 438-3734

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SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §47.85

The Department of Aging and Disability Services withdraws the proposed repeal of §47.85 which appeared in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8755).

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901547
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 24, 2009
For further information, please call: (512) 438-3734

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SUBCHAPTER H. INTEGRATED CARE MANAGEMENT

40 TAC §§47.101, 47.103, 47.105, 47.107, 47.109, 47.111, 47.113, 47.115, 47.117, 47.119

The Department of Aging and Disability Services withdraws proposed new §§47.101, 47.103, 47.105, 47.107, 47.109, 47.111, 47.113, 47.115, 47.117, and 47.119 which appeared in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8756).

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901548
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 24, 2009
For further information, please call: (512) 438-3734

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.7

The Texas Ethics Commission adopts an amendment to §22.7, relating to documentation that a candidate, officeholder, or political committee must obtain from an out-of-state political committee before accepting a political contribution from the out-of-state political committee. The amendment is adopted without changes to the proposed text as published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1495) and will not be republished.

The amendment to §22.7 would track statutory changes made to §253.032 of the Election Code and would update the rule to be consistent with that statute.

No comments were received regarding the proposed rule during the comment period.

The amendment to §22.7 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901565
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: May 17, 2009
Proposal publication date: March 6, 2009
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts the repeal and replacement of 1 TAC §355.7001, concerning Telemedicine Services Reimbursement, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 11) and will not be republished.

Background and Justification

The Texas Medicaid program allows certain services to be provided via telemedicine. During a telemedicine visit, a distant site provider provides services to a patient who is located at another site (the patient site). A presenter at the patient site introduces the patient to the distant site provider for examination, and may assist in the telemedicine visit.

Senate Bill (SB) 24 and SB 760, 80th Legislature, Regular Session, 2007, direct HHSC to make policy changes to the Medicaid telemedicine program. SB 24 instructs HHSC to add office visits as an additional telemedicine service for which distant site providers may receive reimbursement. This bill also directs HHSC to either: (1) allocate reimbursement between the distant site provider and the patient site provider; or (2) establish a facility fee that the distant site provider is required to pay the patient site provider. SB 760 changes the Medicaid telemedicine terminology and directs HHSC to encourage all health-care providers and health-care facilities to provide services via telemedicine.

In order to implement SB 24 and SB 760, and further align Texas Medicaid telemedicine services with Medicare to reduce provider confusion, HHSC Rate Analysis adopts the new telemedicine reimbursement methodology rule at 1 TAC §355.7001 to correspond with the proposed new program policy rules at 1 TAC §354.1430 and 1 TAC §354.1432.

Comments

The 30-day comment period ended February 2, 2009. During this period, HHSC did not receive any comments regarding the proposed amendments to §355.7001.

SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901544
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2009
Proposal publication date: January 2, 2009
For further information, please call: (512) 424-6900

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1 TAC §355.7001

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901545
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 14, 2009
Proposal publication date: January 2, 2009
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §1.36

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §1.36, concerning the Property Condition Assessment section of the Real Estate Analysis Rules and Guidelines, without changes as published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1331) and will not be republished.

This section was amended in order to address the technical error that was made to the final rule and the inadvertent omission of a portion of the §1.36 Property Condition Assessment Guidelines.

No public comment was received during the public comment period.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901564
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2009
Proposal publication date: February 27, 2009
For further information, please call: (512) 475-3916

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION

SUBCHAPTER AA. COMMISSIONER OF EDUCATION: GENERAL PROVISIONS

19 TAC §30.1001

The Texas Education Agency (TEA) adopts an amendment to §30.1001, concerning petitioning for adoption of rule changes. The amendment is adopted without changes to the proposed text as published in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1777) and will not be republished. The section establishes in rule the process for petitioning the adoption of changes to commissioner of education rules, as required by Texas Government Code, §2001.021. The amendment adopts in rule the form to be used when an individual elects to petition adoption of commissioner rule changes in the Texas Administrative Code.

Texas Government Code, §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the commissioner of education adopted 19 TAC Chapter 30, Administration, Subchapter AA, Commissioner of Education: General Provisions, §30.1001, Petition for Adoption of Rule Changes, effective September 23, 2004.

During the recent statutorily-required review of agency rules, the TEA legal counsel determined that the form used to petition for adoption of a rule change should be adopted in rule as a figure. Following the advice of TEA legal counsel, the adopted amendment to 19 TAC Chapter 30, Administration, Subchapter AA, Commissioner of Education: General Provisions, §30.1001, Petition for Adoption of Rule Changes, adopts in rule as a figure the form used to petition for the adoption of rule changes to ensure compliance with statute and increase public awareness. The form has been posted on the TEA rules website since initial adoption of 19 TAC §30.1001 in September 2004.

The adopted amendment will establish in rule the form to be used when an individual elects to petition adoption of commissioner of education rule changes in the Texas Administrative Code.

The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that the amendment will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposed rule action began March 13, 2009, and ended April 13, 2009. No public comments were received.

The amendment is adopted under the Texas Government Code, §2001.021, which authorizes a state agency to by rule prescribe the form for a petition and the procedure for the submission, consideration, and disposition.

The adopted amendment implements the Texas Government Code, §2001.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2009.

TRD-200901527
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 12, 2009
Proposal publication date: March 13, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2, §217.4

The Texas Board of Nursing (Board) adopts amendments to §217.2, concerning Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions, and §217.4, concerning Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction. Sections 217.2 and 217.4 are adopted without changes to the proposed text published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1171) and will not be republished.

The amendments to §217.2 and §217.4 are adopted under the Occupations Code §§301.157, 301.252, 301.259, and 301.151 and are necessary to: (i) ensure that applicants for vocational nurse licensure complete an appropriate education program for the vocational scope of practice; and (ii) allow qualifying nurses to apply to the Board for a six month accustomation permit, which would permit them to participate in nursing education courses and clinical experiences in Texas. Currently, §217.2(a)(4)(B) permits an applicant for vocational nurse licensure who has attended a (Texas-based) professional nursing education program to substitute completion of an acceptable level of a Board-approved professional nursing education program, as determined by the Board. Because students in professional education programs are prepared for the professional role and do not typically study the differentiation of professional versus vocational roles, this provision no longer has its intended effect. As such, adopted §217.2(a)(4)(B) eliminates this provision so that all licensed vocational nurse applicants must complete approved vocational education programs for initial licensure under §217.2. Currently, §217.4(a)(1)(B) permits an applicant for vocational nurse licensure who was educated in a program outside of United States jurisdictions to substitute (i) completion of curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs in lieu of (ii) completion of an approved vocational nursing education program. In essence, §217.4(a)(1)(B) allows licensed vocational nurse applicants to substitute the completion of a professional nursing education program for the completion of a vocational nursing education program for purposes of initial licensure under §217.4. Because the scopes of practice of vocational nurses and professional nurses are different, however, and because nursing education programs outside of United States jurisdictions do not address the vocational nursing role, this provision no longer has its intended effect. As such, adopted §217.4(a)(1)(B) eliminates this provision so that all licensed vocational nurse applicants must complete approved vocational education programs for initial licensure under §217.4. The adopted amendment to §217.4(e) is necessary to provide qualifying nurses the opportunity to participate in clinical experiences in Texas prior to taking an NCLEX exam. Specifically, the adopted amendment will allow certain nurses who have graduated from accredited nursing programs outside the United States to apply to the Board for a six month accustomation permit. This six month accustomation permit will allow a qualifying nurse to participate in nursing education courses and clinical experiences in Texas. Currently, a nurse who has graduated from an accredited nursing program outside the United States does not have access to education courses or clinical experiences designed to facilitate a transition to United States nursing practice. As a result, many of these nurses find it difficult to acclimate to the nuances of the United States healthcare system and to pass an NCLEX exam. The intended purpose of the adopted amendment is to ease the transition of these nurses into the United States healthcare system and to facilitate a higher passage rate of the NCLEX exam. In order for an applicant to be eligible for an accustomation permit, the applicant must have graduated from an accredited nursing program outside the United States, may not have taken the NCLEX-PN (applicants for vocational license) or the NCLEX-RN (applicants for professional license) prior to applying for the accustomation permit, and must successfully complete a credential evaluation service from one of the following Board approved credentialing agencies: (i) the Commission on Graduates of Foreign Nursing Schools; (ii) the Educational Records Evaluation Service; or (iii) the International Education Research Foundation. Additionally, certain restrictions have been adopted in order to ensure that the public is properly protected once an accustomation permit is approved. Upon receipt of the accustomation permit, the applicant may only participate in nursing education courses and clinical experiences under the direct supervision of a registered nurse who holds an unencumbered Texas license. Adopted §217.4(e) also makes clear that an applicant may not be left alone with a patient at any time. These limiting conditions are necessary to maintain a safe environment for patients and others and to ensure the highest quality of nursing care.

The following is a section-by-section overview of the adopted amendments.

Section 217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions. Adopted §217.2(a)(4)(B) eliminates subparagraph (B) in its entirety, which states "who have attended a professional nursing education program shall meet all of the requirements for licensure by examination as stated in this section, but may substitute completion of an acceptable level of a board-approved professional nursing education program as determined by the board". The remaining adopted amendments to §217.2 re-designate the subparagraph accordingly.

Section 217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdictions. Adopted §217.4(a)(1)(B) removes the phrase "or curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs" from subparagraph (B). Adopted §217.4(e)(1) permits an applicant who has graduated from an accredited nursing program outside the United States to apply to the Board for a six month accustomation permit by completing an application and paying a fee. Further, adopted §217.4(e)(1) permits an applicant holding an accustomation permit to participate in nursing education courses and clinical experiences. Adopted §217.4(e)(2) provides that an applicant is eligible to apply for an accustomation permit only if the applicant has: (i) graduated from an accredited nursing program outside the United States; (ii) never taken the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants); and (iii) successfully completed a credential evaluation service from a board approved credentialing agency. Adopted §217.4(e)(3) requires an applicant holding an accustomation permit to participate in nursing education courses and clinical experiences under the direct supervision of a registered nurse who holds a current and unencumbered Texas license only. Finally, adopted §217.4(e)(3) prohibits an applicant from being left alone with a patient at any time. The remaining adopted amendments to §217.4 re-designate the subsections accordingly.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 217.2(a)(4)(B).

Comment: A commenter states that she believes that the proposed amendment to §217.2(a)(4)(B) will contribute to further decline in the number of nurses for the state of Texas. She further states that her institution has had students who did not complete the entire ADN program, but met the Board's required educational hours to take the NCLEX-PN examination. Further, these students passed the NCLEX-PN examination on their first attempt and, from all reports, have become safe practicing vocational nurses. The commenter states that some students have returned to enroll in the LVN to RN Transition program and went on to become registered nurses. The commenter states that she would hate to see her institution's students have to "jump through hoops" and possibly not have the opportunity to become a LVN after completing all but a portion of the final semester of a 2 year ADN program, as well as risk the chance of never becoming a registered nurse. The commenter also states that if the Board believes that this group of candidates lack understanding of the "role performance and scope of practice appropriate for a licensed vocational nurse", maybe the Board could offer a short on-line course to teach and test this content. The commenter states that her institution's ADN Program includes the role of the vocational nurse versus the registered nurse in the Introduction to Professional Nursing Course. The commenter states that her institution also includes discussion of the different practices established in the DELC's for the Vocational Nurses versus the Registered Nurse. The students also implement these different role concepts in their Leadership clinical rotation. Lastly, the commenter states that since there is such a small number of individuals affected by the current licensure code (39 from 2003-2008) and because of the benefits of the current ruling to the nursing profession identified in her comment, she urges the Board to reconsider and deny approval of the proposed amendment to §217.2(a)(4)(B).

Board Response: The Board declines to deny adoption of the proposed amendments to §217.2(a)(4)(B). First, the Board disagrees that the adopted amendments to §217.2(a)(4)(B) will have a measurable impact on the number of nurses in the state of Texas. Current data from the National Council of State Boards of Nursing (NCSBN) covering the time period of January 1, 2003 through December 30, 2008 shows that only an average of approximately 39 individuals each year partially complete a professional nursing educational program and become a licensed vocational nurse in Texas by taking the NCLEX-PN® examination. Further, only an average of approximately seven individuals each year graduate from a professional nursing educational program, fail the NCLEX RN® examination, and go on to become a licensed vocational nurse in Texas by taking the NCLEX-PN® examination. Based on these figures, the Board anticipates that the adopted amendments will only impact approximately 46 licensed vocational nurse applicants each year. In comparison, approximately 5,800 licensed vocational nurse applicants will not be affected by the adopted amendments each year, as these applicants typically complete a traditional vocational educational program prior to taking the NCLEX-PN® examination. Further, the Board anticipates that the benefits of the adopted amendments will outweigh any negative effects the adopted amendments may have on the 46 licensed vocational nurse applicants each year. The primary intention of the adopted amendments is to ensure that applicants for vocational nurse licensure complete an appropriate education program for the vocational scope of practice. The Board has been made aware of public concern that applicants who become licensed vocational nurses in Texas by substituting the completion of a professional nursing education program for the completion of an approved vocational nursing education program often lack education in the areas of role performance and scope of practice. This is particularly concerning to the Board because licensed vocational nurses are limited in their scopes of practice and should be aware of such limitations. Further, deans and directors of professional nursing educational programs have expressed difficulty in completing required forms for out-of-state and United States territories' vocational nurse graduates and registered nurse undergraduates because required vocational nursing educational curricula content and contact hours are not easily equated to the curricula content and contact hours in professional nursing educational programs. This is particularly true in regard to content addressing the role, responsibilities, and scope of practice of the licensed vocational nurse. Great variation exists in the interpretation of equitable curricula content and contact hours. The adopted amendments will eliminate the need for deans and directors of professional nursing educational programs to calculate equitable curricula content and contact hours in this context, which should alleviate any perceived unfairness surrounding this process. Further, the adoption of the proposed amendments will result in better compatibility with other states and ensure the appropriate level of competence of all licensed vocational nurse applicants. The Board is a member of the Nurse Licensure Compact (Compact).

One of the general purposes of the Compact is to ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation. Most other Compact party states do not offer vocational nurse applicants who have attended a professional nursing educational program the option of substituting the completion of their professional nursing educational program for the completion of a vocational educational program in order that they may take the NCLEX-PN® examination. These Compact party states also do not allow individuals utilizing such an option in another state to be licensed by endorsement in their state. The adopted amendments will eliminate this option in Texas, thus aligning Texas' licensing requirements for vocational nurses more closely with other Compact party states. The elimination of this option in Texas should also enable more vocational nurse licensures by endorsement in other Compact party states. Lastly, at the Board's regularly scheduled July 2008 meeting, the Board issued a charge to the Advisory Committee on Education (Committee) to study and make recommendations regarding the issues involved with permitting a student who has partially completed a professional nursing educational program or graduated from a professional nursing educational program and then failed the NCLEX-RN® Examination to apply for licensure as a vocational nurse in Texas by taking the NCLEX-PN® Examination. The Committee addressed this charge during the November 17, 2008 Committee meeting in Austin and finalized its recommendation to the Board during the December 15, 2008 Committee conference call meeting. After a thorough discussion and review of the issue, the Committee recommended eliminating the possibility for anyone who has not completed a state-board approved vocational nursing educational program to apply for licensure in Texas as a licensed vocational nurse by either examination or endorsement and recommended any necessary amendments to §217.2 to achieve this end. The Board's adoption of the proposed amendments to §217.2(a)(4)(B) is consistent with the Committee's recommendations on this issue. Further, the Board does not necessarily disagree that an on-line course and/or exam may be an appropriate method to teach and test the role performance and scope of practice appropriate for a licensed vocational nurse. However, no such course and/or exam presently exists, and the Board has not considered the feasibility of such an option. As such, while an online course and/or exam may be an option for further consideration in the future, the Board declines to delay or deny adoption of the proposed amendments to §217.2(a)(4)(B) based upon that possibility.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None.

For, with changes: None.

Against: College of the Mainland.

Neither for nor against, with recommended changes: None.

The amendments are adopted pursuant to the authority of the Occupations Code §§301.157, 301.252, 301.259, and 301.151, which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901557
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: May 14, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 305-6811

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CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) adopts amendments to §223.1, concerning Fees. Section 223.1 is adopted without changes to the proposed text published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1176) and will not be republished.

The amendments to §223.1(a)(8) are adopted under the Occupations Code §301.151 and §301.155 and are necessary to (i) implement a new $25 fee, as required by adopted §217.4 of this title (relating to Requirements For Initial Licensure By Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction) and (ii) clarify the amount of the fees referenced in §223.1(a)(8) for the issuance of a temporary permit for completing a refresher course and for the issuance of a temporary permit under the Occupations Code §301.258. Simultaneously with the adoption of the amendments to §223.1(a)(8), the Board is also adopting amendments to §217.4 that will permit nurses meeting specified criteria to apply to the Board for accustomation permits. These adopted amendments are also published in this edition of the *Texas Register.* These six month accustomation permits will authorize qualifying nurses to participate in nursing education courses and clinical experiences in Texas. The adopted amendments to §217.4 also require each applicant to submit an accompanying fee to the Board with each accustomation permit application. As a result, adopted §223.1(a)(8) is necessary to implement the fee requirements of adopted §217.4. The Occupations Code §301.155(a) requires the Board to adopt fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. The adopted new $25 fee in §223.1(a)(8) is necessary to cover the costs associated with receiving, reviewing, and processing an accustomation permit application under adopted §217.4. The adopted amendments to §223.1(a)(8) also clarify that the fee for the issuance of a temporary permit for completing a refresher course and the fee for the issuance of a temporary permit under §301.258 is $25.

The following is a section-by-section overview of the adopted amendments.

Section 223.1. Fees. Adopted §223.1(a)(8) provides that the issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit is $25.

The Board did not receive any comments on the proposed amendments.

The amendments are adopted under the Occupations Code §301.155 and §301.151. The Occupations Code §301.155 provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering

the Occupations Code Chapter 301. The Occupations Code §301.151 provides that the Board may adopt and enforce rules consistent with the Occupations Code Chapter 301 and that are necessary to perform its duties and conduct proceedings before the Board, regulate the practice of professional and vocational nursing, establish standards of professional conduct for license holders, and determine whether an act constitutes the practice of professional or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901558
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: May 14, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 305-6811

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER E. CHILDREN'S OUTREACH HEART PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§61.71 - 61.83, and new §§61.71 - 61.83 concerning the Children's Outreach Heart Program (COHP), without changes to the proposed text as published in the January 30, 2009, issue of the *Texas Register* (34 TexReg 504) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The COHP provides prediagnostic cardiac screening and follow-up services to individuals less than 21 years of age who may have heart disease or defects. The COHP contractor provides routine clinic services, including a comprehensive history and physical exam, as well as laboratory studies, electrocardiograms, chest x-rays, and an individual care plan for each client who is referred by the clinic to a secondary center.

The repeals and new sections will reorganize and update information, delete and revise language, and make grammatical corrections to improve flow, accuracy, and clarity.

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 continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The rules update references to the legacy agency, now part of the Health and Human Services Commission, reflect the department's name change from "Texas Department of Health" to "Department of State Health Services." References to the compliance document, "Quality Care: Client Services Standards for Public Health and Community Clinics," dated June 1997, reflect the document's name change to "Department of State Health Services Standards for Public Health Clinic Services," dated August 2004.

New §61.71 includes the general purpose of the program and refers to confidentiality of information.

New §61.72 includes new definitions that improve and clarify the rules.

New §61.73 includes language necessary for clarification of the COHP client services eligibility requirements.

New §61.74 includes language necessary for clarification of COHP contractor funding requirements.

New §61.75 includes language necessary for clarification of the contractor's responsibility to maximize program income and establish client co-payment policy.

New §61.76 includes language necessary for clarification of contractor staff responsibilities.

New §61.77 includes language necessary for clarification of requirements of clinic facilities and equipment and compliance with the document "Department of State Health Services Standards for Public Health Clinic Services," dated August 2004.

New §61.78 includes language necessary for clarification of required clinical services and contractor staff responsibilities.

New §61.79 includes language necessary for clarification of the contractor and clinic staff responsibility for coordination of community services.

New §61.80 includes language necessary for clarification of the clinic(s) and contractor responsibility to maintain client rights.

New §61.81 includes language necessary for clarification of the responsibility of clinic(s) to maintain a tracking system that monitors each client's health status and use of health care services.

New §61.82 includes language necessary for clarification of the responsibility of clinic(s) to comply with HIPAA records management requirements and the document "Department of State Health Services Standards for Public Health Clinic Services," dated August 2004.

New §61.83 includes language necessary for clarification of the contractor's responsibility for internal review, evaluation of program services, and reporting in compliance with department policy and the document "Department of State Health Services Standards for Public Health Clinic Services," dated August 2004.

COMMENTS

The department, on behalf of the commission, did not receive any public comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§61.71 - 61.83

STATUTORY AUTHORITY

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901562
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 17, 2009
Proposal publication date: January 30, 2009
For further information, please call: (512) 458-7111 x6972

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25 TAC §§61.71 - 61.83

STATUTORY AUTHORITY

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2009.

TRD-200901563
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 17, 2009
Proposal publication date: January 30, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER D. DESIGNATED FACILITIES AND POLLUTANTS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts Subchapter D, new Division 3, §§113.2100 - 113.2174; new Division 4, §§113.2200 - 113.2261; and new Division 5, §§113.2300 - 113.2357.

New §113.2317 and §113.2352 are adopted *with changes* to the proposed text as published in the November 21, 2008, issue of the *Texas Register* (33 TexReg 9371). Sections 113.2100 - 113.2174, 113.2200 - 113.2261, and 113.2300 - 113.2316, 113.2318 - 113.2351, and 113.2353 - 113.2357 are adopted *without changes* to the proposed text and will not be republished.

The commission will also include these adopted rules in the accompanying Federal Clean Air Act (FCAA), §111(d)/129 State Plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments to Chapter 113 would revise Subchapter D (Designated Facilities and Pollutants), to add new Division 3 (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999), new Division 4 (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999), and new Division 5 (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004) to incorporate the emission guidelines found in 40 Code of Federal Regulations (CFR) Part 60 (Standards of Performance for New Stationary Sources).

New Source Performance Standards and Emission Guidelines

The FCAA, §111 (Standards of Performance for New Stationary Sources) and §129 (Solid Waste Combustion) require the United States Environmental Protection Agency (EPA) to develop and adopt performance standards and other requirements for each category of solid waste incineration units. The standards are required to include emissions limitations and other requirements applicable to new units and other requirements applicable to existing units. The new source performance standards (NSPS) apply to new stationary sources in which construction begins after the NSPS is proposed or that are reconstructed or modified on or after a specified date. Emission guidelines are similar to the NSPS, except that they apply to existing sources in which construction begins on or before the date the NSPS is proposed or that are reconstructed or modified before a specified date. Unlike the NSPS, emission guidelines are not enforceable until the EPA approves a state plan or adopts a federal plan for implementing and enforcing them, and the state or federal plan becomes effective. The emission guidelines incorporated as part of this rulemaking are for certain solid waste incineration units, as specified in this preamble. Under the FCAA, §129, the NSPS and emis-

sion guidelines adopted for solid waste incineration units must meet maximum achievable control technology, or the maximum degree of reduction in emissions of air pollutants that the EPA determines is achievable, taking into consideration the cost of achieving reductions and any non-air quality health and environmental impacts and energy requirements.

Additionally, states are required under the FCAA, §129 and the emission guidelines, to adopt and submit to the EPA for approval, a state plan to implement and enforce the emission guidelines. The state plan is required to be at least as protective as the emission guidelines. The FCAA, §129 requires the EPA to develop, implement, and enforce a federal plan if a state fails to submit a satisfactory state plan. The EPA promulgated a federal plan to implement 40 CFR Part 60, Subpart BBBB for existing small municipal waste combustors on January 31, 2003, in 40 CFR Part 62, Subpart JJJ. This federal plan became effective on January 31, 2003. The EPA also promulgated a federal plan to implement 40 CFR Part 60, Subpart DDDD for existing commercial and industrial solid waste incinerators (CISWIs) on October 3, 2003, in 40 CFR Part 62, Subpart III. This federal plan became effective on November 3, 2003. While the EPA proposed a federal plan to implement 40 CFR Part 60, Subpart FFFF for other solid waste incineration (OSWI) units on December 18, 2006 (40 CFR Part 62, Subpart KKK), the EPA has not yet finalized the federal plan. Interested persons may consult the emission guidelines and proposed and final federal plans for further information concerning the requirements that are the subject of this adopted rulemaking. The commission is adopting a state plan to implement and enforce the emission guidelines that are the subject of this adopted rulemaking as part of a separate, concurrent process.

40 CFR Part 60, Subparts BBBB, DDDD, and FFFF

To meet the requirements of the FCAA, §129, the commission adopts the incorporation of three new emission guidelines into Chapter 113: 40 CFR Part 60, Subpart BBBB (Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999) published in the December 6, 2000, issue of the *Federal Register* (65 FR 76378); Subpart DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999) published in the December 1, 2000, issue of the *Federal Register* (65 FR 75338); and Subpart FFFF (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004) published in the December 16, 2005, issue of the *Federal Register* (70 FR 74870).

Copies of these emission guidelines are available through the EPA, the commission, or online from the EPA Federal Register Web site at: *http://www.epa.gov/fedrgstr/*.

40 CFR Part 60, Subpart BBBB, Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

On December 6, 2000, the EPA promulgated emission guidelines for small municipal waste combustion (MWC) units constructed on or before August 30, 1999, defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide, in addition to other requirements.

40 CFR Part 60, Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999

On December 1, 2000, the EPA promulgated emission guidelines for CISWI units that commenced construction on or before November 30, 1999, defined as any combustion device that combusts commercial and industrial waste, as defined in this subpart. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, opacity, oxides of nitrogen, particulate matter, and sulfur dioxide, in addition to other requirements.

40 CFR Part 60, Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004

On December 16, 2005, the EPA promulgated emission guidelines for OSWI units that commenced construction on or before December 9, 2004, defined as either a very small MWC unit or an institutional waste incineration unit, as defined in this subpart. As required by the FCAA, §129, the emission guidelines establish numerical emission limits for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, opacity, oxides of nitrogen, particulate matter, and sulfur dioxide, in addition to other requirements.

EPA Model Rules

In the emission guidelines for 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF, the EPA included model rule language. The EPA states that the model rule is the portion of each of the emission guidelines that addresses the applicable requirements for each subpart in a standard regulation format, and that a state may either use the EPA's model rules as a part of its state plan, or may use alternative language if it is at least as protective as the model rule contained in each subpart.

To meet the federal requirements for its FCAA, §111(d)/129 State Plan, the commission opted to use the model language provided by the EPA in 40 CFR, and adopts the incorporation of the EPA rules into 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Subchapter D, Designated Facilities and Pollutants; new Divisions 3 - 5, with the administrative changes noted in this preamble.

SECTION BY SECTION DISCUSSION

The commission adopts various changes to the EPA model rules to be incorporated into Chapter 113 primarily to revise rule subdivision formatting and cross-references to conform with the publication requirements of the Texas Register. Throughout the rules, where appropriate, the commission also adopts additional changes to the model rule language for administrative ease and clarity, including: changing the word "Administrator" to "executive director" so that when the Chapter 113 rules and state plan are approved by the EPA, the rules reflect that the commission will enforce the rules, rather than the EPA; changing the EPA's subpart references to the appropriate TCEQ division references; defining acronyms as they are used in each section; and revising legal citations so that they will clearly identify the federal statute, such as the FCAA. Finally, the commission adopts minor spelling, capitalization, and grammatical revisions, such as the addition of "United States" before "Environmental Protection Agency" and consistent use of the term "operating

permit" throughout the rules. These nonsubstantive changes conform to both Texas Register formatting requirements and agency style conventions.

Besides the general changes listed in the previous paragraph, throughout the rules, the commission also adopts specific changes that are noted in this preamble under the specific section number in which the change is adopted. The commission adopts these additional, specific changes to the EPA model rules to ensure clear understanding of the rule requirements and proper state enforcement of the rules.

Division 3, Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB)

§113.2100--Definitions.

The commission adopts new §113.2100, which defines terms used in new Division 3 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.1940 (What definitions must I know?).

§113.2101--What are my requirements for meeting increments of progress and achieving final compliance?

The commission adopts new §113.2101, which specifies what must be completed for both Class I and Class II units to meet final compliance. The adopted section states that the increments of progress for Class I units include the following: final control plan, notification of retrofit contract award, initiation of onsite construction, completion of onsite construction, and final compliance. Class II units need only submit a final control plan and achieve final compliance.

§113.2102--When must I complete each increment of progress?

The commission adopts new §113.2102, which specifies that the compliance dates for each of the increments of progress for Class I and Class II units are located in Table 1 of Division 3 (§113.2174).

§113.2103--What must I include in the notifications of achievement of my increments of progress?

The commission adopts new §113.2103, which specifies that notifications demonstrating achievement of increments of progress must include three items: notification that the increment of progress has been achieved; any items required to be submitted with the increment of progress; and signature on the notification by the owner or operator.

§113.2104--When must I submit the notifications of achievement of increments of progress?

The commission adopts new §113.2104, which specifies that notifications demonstrating compliance with the increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§113.2105--What if I do not meet an increment of progress?

The commission adopts new §113.2105, which describes what notification must be submitted to the executive director if an increment of progress is not completed. The adopted section states that the notification: must be postmarked within 10 business days after the specified date in Table 1 of Division 3 (§113.2174); and must convey to the executive director that the increment was not met, contain an explanation of why the increment was not met, and contain the plan to meet the requirements of the increment. The adopted section further states that the reports must continue to be submitted each subsequent month until the increment of progress is met.

For clarification, the commission adopts the specification that monthly progress reports be due on the first day of each month.

§113.2106--How do I comply with the increment of progress for submittal of a control plan?

The commission adopts new §113.2106, which describes two items that must be completed for the control plan increment of progress. The first item is to submit the complete final control plan as specified.

In paragraph (2), the commission adopts the specification that a copy of the final control plan must be maintained at the same location as the solid waste incineration unit.

§113.2107--How do I comply with the increment of progress for awarding contracts?

The commission adopts new §113.2107, which specifies that a signed copy of the contracts awarded must be submitted to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. The adopted section further states that the copy of the contracts with notification that the increment of progress has been achieved must be submitted to comply with the increment of progress for awarding contracts.

For clarification, the commission specifies, in two locations of the section, that items for submittal must be provided to the executive director.

§113.2108--How do I comply with the increment of progress for initiating onsite construction?

The commission adopts new §113.2108, which specifies that onsite construction and installation of emission control equipment and process changes must be completed to achieve the increment of progress for initiating onsite construction.

§113.2109--How do I comply with the increment of progress for completing onsite construction?

The commission adopts new §113.2109, which specifies that onsite construction and installation of control equipment and process changes must be completed to achieve the increment of progress for completing onsite construction.

§113.2110--How do I comply with the increment of progress for achieving final compliance?

The commission adopts new §113.2110, which specifies the two items that must be completed to achieve the final compliance increment of progress. The adopted section states that this includes completion of all process changes and retrofit construction and connection of the air pollution control equipment with the MWC unit, as well as completion of process changes to the MWC unit.

§113.2111--What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

The commission adopts new §113.2111, which describes what must be met when an MWC unit is closed and restarted. The adopted section specifies different requirements, depending on whether the MWC unit reopens before or after the final compliance date in the state plan.

§113.2112--What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

The commission adopts new §113.2112, which states that a closure notification must be submitted by the date the final control plan is due if an MWC unit is permanently closed. The adopted section also states that if the closure date is later than 1 year after the effective date of state plan approval, the owner or operator must enter into a legally binding closure agreement with the executive director.

§113.2113--What types of training must I do?

The commission adopts new §113.2113, which describes the types of training that operators and plant personnel must receive.

§113.2114--Who must complete the operator training course? By when?

The commission adopts new §113.2114, which states the classifications of employees who must complete the operator training course and by what date. These employees include: chief facility operators, shift supervisors, and control room operators. The section specifies EPA or state-approved training courses, unless the employee has obtained full certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval. The adopted section also states that if these employees have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of state plan approval, the EPA may waive the requirement for completion of the EPA or state-approved operator training course, if requested.

§113.2115--Who must complete the plant-specific training course?

The commission adopts new §113.2115, which states the classifications of employees who must complete the plant-specific training course. These employees include: chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers.

§113.2116--What plant-specific training must I provide?

The commission adopts new §113.2116, which details what must be included in the plant-specific training provided to employees, and when. This includes: developing a specific operating manual for that plant; establishing a program to review the manual with people whose responsibilities affect the operation of the MWC unit; updating the manual annually; and reviewing it with staff annually.

§113.2117--What information must I include in the plant-specific operating manual?

The commission adopts new §113.2117, which details what must be included in the plant-specific operating manual for the plant, such as a summary of applicable requirements, description of the basic combustion principles that apply to MWC units, and several specific procedures.

§113.2118--Where must I keep the plant-specific operating manual?

The commission adopts new §113.2118, which specifies that the plant-specific operating manual must be maintained in an easily accessible location at the plant. The adopted section further states that the manual must be available for review or inspection by employees and the executive director.

§113.2119--What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

The commission adopts new §113.2119, which details what types of operator certifications must be obtained and by when. The adopted section states that each chief facility operator and shift supervisor must receive certification from the American Society of Mechanical Engineers or a state certification program. The adopted section also describes the requirements and time frames for both provisional operator certification and full certification.

§113.2120--After the required date for operator certification, who may operate the municipal waste combustion unit?

The commission adopts new §113.2120, which specifies that the MWC unit cannot be operated unless one of four certified employees are on duty. These four employees include a fully certified chief facility operator, a provisionally certified chief facility operator, a fully certified shift supervisor, and a provisionally certified shift supervisor.

§113.2121--What if all the certified operators must be temporarily offsite?

The commission adopts new §113.2121, which details the three criteria that must be met if a certified operator is temporarily offsite and a provisionally certified control room operator is fulfilling the requirement. The adopted section states that these criteria are dependant upon how long the certified operator is temporarily offsite. For instance, if the certified operator is offsite for more than 2 weeks, the executive director must be notified.

For clarification, the commission adopts the word "prior" before "notice" in paragraph (3) to reflect that the provisionally certified control room operator may perform the necessary duties without first giving notice and receiving approval from the executive director. Though prior notice and approval is not necessary, in paragraph (3)(A), the owner or operator is required to follow up with a notification to the executive director, an explanation of what caused the absence of the certified operator, and what is being done to ensure that a certified operator is onsite. Paragraph (3)(B) then contains the required procedures for status reports and corrective action summaries.

In paragraph (3)(A), the commission adds clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is required to be onsite. The 10-day clarification is consistent with the time period provided in §§113.2219, 113.2243, 113.2313, and 113.2341, and the commission adopts the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities.

§113.2122--What are the operating practice requirements for my municipal waste combustion unit?

The commission adopts new §113.2122, which specifies the operating practice requirements for MWC units. These requirements include maximum loads, maximum temperatures, carbon feed rate, and total carbon usage. The adopted section states the conditions and time frames under which the MWC unit is exempt from requirements, as well as specific activities that are exempt.

For clarification, the commission modified the sentence in subsection (e)(5). This paragraph refers to both the executive director and the delegated state authority, and since the executive

director is the delegated state authority for Texas, the additional wording is unnecessary.

§113.2123--What happens to the operating requirements during periods of startup, shutdown, and malfunction?

The commission adopts new §113.2123, which states that all operating requirements apply at all times except during periods of startup, shutdown, or malfunction, which must last no longer than 3 hours.

§113.2124--What pollutants are regulated by this division?

The commission adopts new §113.2124, which lists the 11 pollutants that are regulated. The groups of pollutants include: organics, metals, acid gases, and other.

§113.2125--What emission limits must I meet? By when?

The commission adopts new §113.2125, which states the emission limits for Class I and II units in Tables 2 through 5 of Division 3 (§113.2174) that must be met, as applicable, after the date the initial stack test and continuous emission monitoring system evaluation are required or completed.

§113.2126--What happens to the emission limits during periods of startup, shutdown, and malfunction?

The commission adopts new §113.2126, which states that the emission limits of Division 3 apply at all times except during periods of startup, shutdown, or malfunction, which should last no longer than 3 hours. The adopted section states that a maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

§113.2127--What types of continuous emission monitoring must I perform?

The commission adopts new §113.2127, which specifies the four tasks that must be performed to continuously monitor emissions. These tasks include: installing a continuous emission monitoring system; operating it correctly; obtaining the minimum amount of monitoring data; and installing a continuous opacity monitoring system.

§113.2128--What continuous emission monitoring systems must I install for gaseous pollutants?

The commission adopts new §113.2128, which states that a continuous emission monitoring system must be installed, calibrated, maintained, and operated for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. The adopted section states that the system must meet the monitoring requirements in 40 CFR §60.13 (Monitoring requirements).

§113.2129--How are the data from the continuous emission monitoring systems used?

The commission adopts new §113.2129, which states that the data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide must be used to demonstrate continuous compliance with the applicable emission limit tables of Division 3 (§113.2174).

§113.2130--How do I make sure my continuous emission monitoring systems are operating correctly?

The commission adopts new §113.2130, which describes how and when to verify that continuous emission monitoring systems are operating properly. The adopted section specifies that initial, daily, quarterly, and annual evaluations must be conducted, and that the initial evaluation must be completed within 180 days after the final compliance date. Verification includes evaluating the continuous emission monitoring system, collecting data, and following quality assurance procedures in 40 CFR Part 60, Appendix F (Quality Assurance Procedures).

§113.2131--Am I exempt from any 40 Code of Federal Regulations Part 60, Appendix B or Appendix F requirements to evaluate continuous emission monitoring systems?

The commission adopts new §113.2131, which states that the accuracy tests for sulfur dioxide continuous emission monitoring systems require evaluation of oxygen (or carbon dioxide) continuous emission monitoring systems; therefore, the oxygen system (or carbon dioxide) is exempt from two specific requirements in 40 CFR Part 60.

§113.2132--What is my schedule for evaluating continuous emission monitoring systems?

The commission adopts new §113.2132, which states that annual evaluations of continuous emission monitoring systems must be conducted no more than 13 months after the previous evaluations. This adopted section also states that continuous emission monitoring systems will be evaluated daily and quarterly as specified in 40 CFR Part 60, Appendix F.

§113.2133--What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

The commission adopts new §113.2133, which states that if carbon dioxide is monitored instead of oxygen, the relationship between oxygen and carbon dioxide must be established during the initial evaluation of the continuous emission monitoring systems by three specific procedures.

§113.2134--What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?

The commission adopts new §113.2134, which details what monitoring data must be collected from the continuous emission monitoring systems and how often. In addition, requirements, including notifying the executive director, are included if the minimum data requirements are not met.

§113.2135--How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

The commission adopts new §113.2135, which includes the specific equations and methods that must be used to convert 1-hour arithmetic averages into appropriate averaging times and units.

§113.2136--What is required for my continuous opacity monitoring system and how are the data used?

The commission adopts new §113.2136, which details the requirements for the continuous opacity monitoring system. The adopted section includes specific time frames, CFR cites, and table references for the opacity limit.

§113.2137--What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

The commission adopts new §113.2137, which requires the use of span values and applicable performance specifications in Table 8 of Division 3 (§113.2174) for the operation of continuous emission monitoring systems and continuous opacity monitoring system.

§113.2138--What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

The commission adopts new §113.2138, which refers to Table 8 of Division 3 (§113.2174). This table provides alternate methods for collecting data when continuous emission monitoring systems are temporarily unavailable.

§113.2139--What types of stack tests must I conduct?

The commission adopts new §113.2139, which states that initial and annual stack tests must be conducted to measure emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§113.2140--How are the stack test data used?

The commission adopts new §113.2140, which requires the use of stack test results to demonstrate compliance with the applicable emission limits in Tables 2 and 4 of Division 3 (§113.2174) for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§113.2141--What schedule must I follow for the stack testing?

The commission adopts new §113.2141, which requires that initial stack testing be conducted no later than 180 days after the final compliance date. The adopted section also states that annual stack tests must be conducted no later than 13 months after the previous stack test.

§113.2142--What test methods must I use to stack test?

The commission adopts new §113.2142, which describes the test methods that must be used for stack testing, including the criteria in Table 8 of Division 3 (§113.2174), number of test runs, determining diluent gas levels, calculating emission levels, and procedures for applying for an alternative method.

§113.2143--May I conduct stack testing less often?

The commission adopts new §113.2143, which allows testing less often for a Class II MWC unit for which all stack tests for a given pollutant over 3 consecutive years show compliance with the emission limit. In addition, this adopted section allows testing less often for dioxins/furans emissions for an MWC plant that meets the following two conditions: multiple MWC units are onsite that are subject to this division; and all those MWC units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years.

§113.2144--May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

The commission adopts new §113.2144, which does not allow for deviation from the 13-month testing schedules, unless the executive director has approved an alternative schedule.

§113.2145--Must I meet other requirements for continuous monitoring?

The commission adopts new §113.2145, which specifies three other operating parameters for continuous monitoring: load level, flue gas temperature, and carbon feed rate.

§113.2146--How do I monitor the load of my municipal waste combustion unit?

The commission adopts new §113.2146, which specifies two ways to monitor the load of the MWC unit. If the unit generates steam, the owner or operator must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter. If the unit does not generate steam or units have shared steam systems, the owner or operator must determine one or more operating parameters that can be used to continuously estimate load level and receive approval from the executive director.

§113.2147--How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

The commission adopts new §113.2147, which states that to monitor the temperature of the flue gases, a device to continuously measure the temperature must be installed, calibrated, maintained, and operated.

§113.2148--How do I monitor the injection rate of activated carbon?

The commission adopts new §113.2148, which requires that owners or operators of MWC units using activated carbon to control dioxins/furans or mercury emissions do the following: select a carbon injection system operating parameter to calculate carbon feed rate; during stack tests, determine the average carbon feed rate; and continuously monitor the selected operating parameter during all periods when the unit is operating and combusting waste.

§113.2149--What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

The commission adopts new §113.2149, which details the parameter monitoring data collection requirements. If continuous parameter monitoring is used, a 1-hour arithmetic average must be calculated with at least two data points per hour. Valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter must be obtained. The adopted section states that failure to collect the minimum data requires notification to the executive director.

§113.2150--What records must I keep?

The commission adopts new §113.2150, which states that the four types of records that must be kept are: operator training and certification; stack tests; continuously monitored pollutants and parameters; and carbon feed rate.

§113.2151--Where must I keep my records and for how long?

The commission adopts new §113.2151, which requires that all records be maintained onsite in paper copy or electronic format for at least 5 years. The adopted section states that these records must be available for submittal to the executive director or for onsite review.

§113.2152--What records must I keep for operator training and certification?

The commission adopts new §113.2152, which requires records for operator training and certification of the following six items: provisional certifications; full certifications; completion of the operator training course; reviews for plant-specific operating manuals; records of when a certified operator is temporarily offsite; and calendar dates on each record.

§113.2153--What records must I keep for stack tests?

The commission adopts new §113.2153, which requires that stack test records contain the following four items: results of stack tests for eight pollutants or parameters; test reports;

maximum demonstrated load and temperature; and calendar date of each record.

§113.2154--What records must I keep for continuously monitored pollutants or parameters?

The commission adopts new §113.2154, which requires that eight records be maintained for continuously monitored pollutants or parameters. These eight records are: monitoring data; average concentrations and percent reductions; exceedances; minimum data; exclusions; drift and accuracy; relationship between oxygen and carbon dioxide; and calendar dates.

§113.2155--What records must I keep for municipal waste combustion units that use activated carbon?

The commission adopts new §113.2155, which requires five records for MWC units that use activated carbon to control dioxins/furans or mercury emissions. These five records are: average carbon feed rate; low carbon feed rates; minimum carbon feed rate data; exclusions; and calendar dates.

§113.2156--What reports must I submit and in what form?

The commission adopts new §113.2156, which states what reports must be submitted and how. These reports include initial, semiannual, and annual reports and the section states that reports must be submitted on paper, postmarked on or before the submittal dates. The section further states that the executive director must approve submission of electronic reports, and that copies of all reports must be maintained onsite for 5 years.

The commission adds, for clarification, that electronic reporting must meet the specifications of 30 TAC Chapter 19 (Electronic Reporting).

§113.2157--What are the appropriate units of measurement for reporting my data?

The commission adopts new §113.2157, which refers readers to Tables 2 through 5 of Division 3 (§113.2174) for appropriate units of measurement to be used when reporting data.

§113.2158--When must I submit the initial report?

The commission adopts new §113.2158, which requires that the initial report be submitted no later than 180 days after the final compliance date. The final compliance date is contained in Table 1 of Division 3 (§113.2174), and for both Class I and Class II units, is no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval.

§113.2159--What must I include in my initial report?

The commission adopts new §113.2159, which states the seven items that must be included in the initial report. These items include the following: emission levels measured on the date of the initial evaluation of the continuous emission monitoring systems; results of initial stack tests; the test report that documents initial stack tests; the initial performance evaluation of the continuous emissions monitoring systems; the maximum demonstrated load and temperature; the average carbon feed rate recorded during the initial stack tests; and documentation of the relationship between oxygen and carbon dioxide.

§113.2160--When must I submit the annual report?

The commission adopts new §113.2160, which states that annual reports must be submitted no later than February 1 of each year that follows the calendar year in which data was collected.

To clarify and simplify the requirements of this section, the commission deletes the reference to 40 CFR Part 71, since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

§113.2161--What must I include in my annual report?

The commission adopts new §113.2161, which states that a summary of data collected for all pollutants and parameters regulated must be included in the annual report. The 12 items that must be included in the summary are: the results of the annual stack test; a list of the highest average levels recorded; the highest 6-minute opacity level measured; for MWC units that use activated carbon for controlling dioxins/furans or mercury emissions, four records; the total number of days that minimum number of hours of data were not obtained; the number of hours of excluded data from the calculation of average levels; notice of intent to begin a reduced stack testing schedule for dioxins/furans; a summary of any emission or parameter level that did not meet the limits; a summary of data that gives a summary of the performance of the MWC unit; documentation of the relationship between oxygen and carbon dioxide; and documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

§113.2162--What must I do if I am out of compliance with the requirements of this division?

The commission adopts new §113.2162, which requires that a semiannual report be submitted on any recorded emission or parameter level that is out of compliance.

§113.2163--If a semiannual report is required, when must I submit it?

The commission adopts new §113.2163, which requires that the semiannual report be submitted by August 1 of the year for data collected during the first half of the calendar year. The section requires that data collected during the second half of the calendar year be submitted in the semiannual report by February 1 of the following year.

§113.2164--What must I include in the semiannual out-of-compliance reports?

The commission adopts new §113.2164, which requires that three items be included in the semiannual reports: calendar dates in which limits were exceeded, along with averaged and recorded data, the reasons for exceeding the limits, and corrective actions; if stack tests indicate that emissions are above specified limits, a copy of the test report that documents emission levels and corrective actions; and for MWC units that apply activated carbon to control dioxins/furans or mercury emissions, documentation of all dates when the 8-hour block average carbon feed rate is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test and documentation of each quarter when total carbon purchased and delivered to the MWC plant is less than the total required quarterly usage of carbon.

§113.2165--Can reporting dates be changed?

The commission adopts new §113.2165, which states that if the executive director agrees, semiannual and annual reporting dates may be changed. The adopted section cites 40 CFR §60.19(c) (General notification and reporting requirements) for procedures to seek approval to change a reporting date.

§113.2166--What is an air curtain incinerator?

The commission adopts new §113.2166, which defines an air curtain incinerator. The adopted section states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. The rules in this division require that owners or operators of air curtain incinerators obtain a Title V permit; however, these units are only required to comply with limited requirements, as opposed to larger entities.

§113.2167--What is yard waste?

The commission adopts new §113.2167, which defines yard waste as grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. The adopted section further states that yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Finally, the adopted section states that yard waste does not include construction, renovation, and demolition wastes that are exempt from the definition of "Municipal solid waste" in §113.2100, or clean wood that is exempt from the definition of "Municipal solid waste" in §113.2100.

§113.2168--What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

The commission adopts new §113.2168, which states that air curtain incinerators that burn 100 percent yard waste must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation. The section states that the emission limits must be met by 180 days after the final compliance date.

§113.2169--How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

The commission adopts new §113.2169, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A (Test Methods 1 through 30B), to determine compliance with the opacity limit. The adopted section states that an initial test must also be conducted as specified in 40 CFR §60.8 (Performance tests). Annual tests must be conducted no more than 13 calendar months following the date of the previous test. As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of the proposal preamble, there would be costs associated with training for conducting opacity testing.

§113.2170--What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

The commission adopts new §113.2170, which requires that a notice of construction be provided that includes four items: intent to construct; planned initial startup date; types of fuels to be combusted; and capacity of the incinerator. The adopted section states that records of opacity test results, as well as copies of all reports, must be maintained onsite for each incinerator for at least 5 years and that all records must be made available to the executive director or for onsite review by an inspector. The adopted section further states that all opacity test results must be submitted by February 1 of the year following the year of the test as a paper copy, unless the executive director approves electronic submission.

§113.2171--What equations must I use?

The commission adopts new §113.2171, which details the equations that must be used in Division 3. Equations are provided to calculate the following: concentration correction to 7 percent oxygen; percent reduction in potential mercury emissions; percent reduction in potential hydrogen chloride emissions; capacity of an MWC unit; capacity of a batch MWC unit; and quarterly carbon usage, for plant basis and unit basis.

§113.2172--Does this subpart require me to obtain an operating permit under Title V of the Federal Clean Air Act?

The commission adopts new §113.2172, which states that units subject to Chapter 113, Subchapter D, Division 3 on the effective date of state plan approval or later are required to apply for and obtain a Title V operating permit. Because these rules and FCAA, §111(d)/129 State Plan are not enforceable by Texas until they are approved by the EPA, the commission proposes to state that applicants are subject to Division 3 on the effective date of state plan approval, rather than on the effective date of the division, which would be 20 days after the commission files the Chapter 113 rule adoption with the Texas Secretary of State's Office. Upon state plan approval, the commission will publish notice in the *Texas Register* and on the TCEQ Web site, to ensure that all affected entities are notified.

This section was not included in the emission guidelines published in the December 6, 2000, issue of the *Federal Register*; however, it was included in the federal plan promulgation that was published in the January 31, 2003, issue of the *Federal Register* (68 FR 5144), as 40 CFR Part 62, Subpart JJJ, §65.15020 (Can my small municipal waste combustion unit be exempt from this subpart?) and §62.15395 (Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?). The federal plan promulgation, including this Title V requirement, became effective on December 6, 2002. Therefore, to ensure that the incorporated rules are as protective as the EPA's rules, as required by FCAA, §129, the commission included this section regarding the Title V permit requirement into its incorporation in Division 3.

In particular, the commission notes that 40 CFR §60.1555 (Are any small municipal waste combustion units exempt from my State plan?) has added some confusion to whether air curtain incinerators are obligated to apply for and obtain Title V permits, since §60.1555 provides that air curtain incinerators that burn 100 percent yard waste must only meet the requirements under §§60.1910 - 60.1930, which do not include the requirement to apply for and obtain a Title V operating permit. As noted above, the federal plan for these sources, 40 CFR Part 62, Subpart JJJ, in §62.15020, requires that air curtain incinerators that burn 100 yard waste must meet only the requirements of §§62.15365 - 62.15385 *and the Title V operating permit requirements of Subpart 62*.

§113.2173--When must I submit a Title V permit application for my existing small municipal waste combustion unit?

The commission adopts new §113.2173, which contains the deadlines for submitting a complete Title V permit application for existing small MWC units. The Title V application submittal date is based either on the promulgation of 40 CFR Part 60, Subpart BBBB (December 6, 2003), or the effective date of the applicable state, tribal, or federal operating permits program, whichever is later. The section also defines a "complete" Title V permit application as one that has been determined or deemed complete by the relevant permitting authority under the FCAA, §503(d) and 40 CFR §70.5(a)(2).

To clarify and simplify the requirements of this section, the commission has deleted references to 40 CFR Part 71 in subsections (a) and (c), since federal requirements are contained within this

part and they are not necessary for state implementation of the rules.

This section was not included in the emission guidelines published in the December 6, 2000, issue of the *Federal Register*; however, it was included in the federal plan promulgation that was published in the January 31, 2003, issue of the *Federal Register* (68 FR 5144), as 40 CFR Part 62, Subpart JJJ, §62.15400 (When must I submit a title V permit application for my existing small municipal waste combustion unit?). The federal plan promulgation, including this Title V requirement, became effective on December 6, 2002. Therefore, to ensure that the incorporated rules are as protective as the EPA's rules, as required by FCAA, §129, the commission included this section regarding the Title V permit requirement into its incorporation in Division 3.

§113.2174--Tables Relating to Division 3.

The commission adopts new §113.2174, which contains the tables referenced in Division 3. These tables include the following: Compliance Schedules and Increments of Progress; Class I Emission Limits for Existing Small Municipal Waste Combustion Units; Class I Nitrogen Oxides Emission Limits for Existing Small Municipal Waste Combustion Units; Class II Emission Limits for Existing Small Municipal Waste Combustion Unit; Carbon Monoxide Emission Limits for Existing Small Municipal Waste Combustion Units; Requirements for Validating Continuous Emission Monitoring Systems (CEMS); Requirements for Continuous Emission Monitoring Systems (CEMS); and Requirements for Stack Tests.

Table 1 specifies the compliance schedules and increments of progress for Class I and Class II units. The emission guidelines for 40 CFR Part 60, Subpart BBBB define Class I units as small MWC units subject to the subpart that are located at MWC plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. Class II units are defined as small MWC units subject to the subpart that are located at MWC plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. If the owner or operator plans to achieve final compliance for a unit more than 1 year following the effective date of state plan approval, and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operating permit if a permit modification is required, owners or operators of the units must meet the deadlines for defined increments of progress. Five increments of progress are required for Class I units, and two are required for Class II units. The last increment for both types of units is final compliance. The first increment for all units, which is submission of the final control plan, is within 60 days from the date the TCEQ publishes notice in the *Texas Register* of state plan approval. Class I units are required to meet three additional increments of progress before meeting the final compliance date, and these increment deadlines are: no later than 18 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 2; no later than 24 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 3; no later than 34 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 4; and no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval for Increment 5. Class II units must only meet Increment 1 and then Increment 5, or final progress. Class II units are also given no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval to meet Increment 5.

To clarify and simplify the information in the tables contained in this section, the commission adopts minor formatting changes and has also deleted information that may confuse regulated entities, such as references to past federal compliance dates.

Division 4, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction On or Before November 30, 1999 (40 CFR Part 60, Subpart DDDD)

§113.2200--Definitions.

The commission adopts new §113.2200, which defines terms used in new Division 4 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.2875 (What definitions must I know?).

For clarification, the commission adopts a modification to paragraph (14)(C), under the definition of deviation. In the portion of the sentence in paragraph (14)(C) that states ". . . regardless or whether or not such failure is permitted by this division. . .," the commission adopts insertion of the word "of." Therefore, the sentence would read as ". . .regardless of whether or not such failure is permitted by this division."

Also for clarification, the commission adopts a modification of paragraph (16), under the definition of discard. This definition includes a reference both to Division 4 and to 40 CFR Part 60, Subpart DDDD, and because the Chapter 113 rules in Division 4 are equivalent to Subpart DDDD, the additional wording is unnecessary. The definition of solid waste, paragraph (30), contains a similar reference to Subpart CCCC, and the commission also adopts the deletion of this reference, because Subpart CCCC applies to new sources, not existing sources, which is the subject of Division 4.

In the September 22, 2005, issue of the *Federal Register* (70 FR 55568), the EPA published amended versions of the definitions for solid waste, commercial or industrial waste, and CISWI unit. Because a federal court has issued a full vacatur of these three definitions, the versions contained in this rule package are the versions as published in the December 1, 2000, issue of the *Federal Register* (65 FR 75338).

§113.2201--What are my requirements for meeting increments of progress and achieving final compliance?

The commission adopts new §113.2201, which states that to achieve compliance more than 1 year following the effective date of the state plan approval, a final control plan must be submitted and final compliance must be achieved.

§113.2202--When must I complete each increment of progress?

The commission adopts new §113.2202, which states that the compliance dates for each increment of progress are established in Table 1 of Division 4 (§113.2261).

§113.2203--What must I include in the notifications of achievement of increments of progress?

The commission adopts new §113.2203, which requires that the following three items be included in the notification of achievement of increments of progress: notification that the increment of progress has been achieved; items required to be submitted with each increment of progress; and signature of the owner or operator of the unit.

§113.2204--When must I submit the notifications of achievement of increments of progress?

The commission adopts new §113.2204, which states that the notifications of achievement of increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§113.2205--What if I do not meet an increment of progress?

The commission adopts new §113.2205, which states that a notification must be submitted to the executive director postmarked within 10 business days if an increment of progress is not met. The adopted section also states that reports must continue to be submitted until the increment of progress is met.

§113.2206--How do I comply with the increment of progress for submittal of a control plan?

The commission adopts new §113.2206, which states that to be in compliance with the increment of progress for submittal of a control plan, the final control plan must include the following: description of control devices and process changes; type of waste burned; maximum design waste burning capacity; maximum charge rate; and petition for site-specific operating limits, if applicable. In addition, a copy of the final control plan must be maintained onsite.

§113.2207--How do I comply with the increment of progress for achieving final compliance?

The commission adopts new §113.2207, which requires that all process changes and retrofit construction be completed for the final compliance of the increment of progress.

§113.2208--What must I do if I close my commercial and industrial solid waste incineration unit and then restart it?

The commission adopts new §113.2208, which states that if a CISWI unit is closed and restarted before the final compliance date, the increments of progress must be met as specified in §113.2201. The section states that if the CISWI is restarted after the final compliance date, emission control retrofits must be completed and the emission limitations and operating limits must be met on the date the unit restarts.

§113.2209--What must I do if I plan to permanently close my commercial and industrial solid waste incineration unit and not restart it?

The commission adopts new §113.2209, which states that if the owner or operator chooses to permanently close the CISWI unit rather than comply with the state plan, a closure notification must be submitted to the executive director by the date the final control plan is due.

§113.2210--What is a waste management plan?

The commission adopts new §113.2210, which states that a waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

§113.2211--When must I submit my waste management plan?

The commission adopts new §113.2211, which specifies that Table 1 of Division 4 (§113.2261) contains the dates to submit the waste management plan.

§113.2212--What should I include in my waste management plan?

The commission adopts new §113.2212, which details what must be included in the waste management plan, such as consideration of the reduction or separation of waste-stream elements and any additional waste management measures. The adopted section states that measures that are considered practical and feasible, based on certain specific criteria, must be implemented.

§113.2213--What are the operator training and qualification requirements?

The commission adopts new §113.2213, which states that no CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible within 1 hour. The adopted section also states that operator training and qualification must be obtained through a state-approved program or an incinerator operator training course must be completed. The adopted section lists the three elements that the operator training course must include, which are: training on 11 topics as specified in this section; an examination designed and administered by the instructor; and written material covering the training course topics that can serve as a reference following completion of the course.

§113.2214--When must the operator training course be completed?

The commission adopts new §113.2214, which requires that the operator training course be completed by the later of the following: the final compliance date; six months after CISWI unit startup; or six months after an employee assumes responsibility for operating or supervising the operation of the CISWI unit.

§113.2215--How do I obtain my operator qualification?

The commission adopts new §113.2215, which states that operator qualification must be obtained by completing a training course. The adopted section also states that the qualification is valid from the date the training course is completed and the operator passes the examination successfully. As stated in §113.2216, operators must complete an annual review or refresher course to maintain qualification.

§113.2216--How do I maintain my operator qualification?

The commission adopts new §113.2216, which requires completion of an annual review or refresher course to maintain qualification. The section specifies that five topics must be included: update of regulations; incinerator operation; inspection and maintenance; malfunctions; and operating problems.

§113.2217--How do I renew my lapsed operator qualification?

The commission adopts new §113.2217, which requires completion of a standard annual refresher course or a repeat of the initial qualification requirements to renew a lapsed operator qualification. The requirement that applies is based on either a lapse of less than 3 years or 3 years or more.

§113.2218--What site-specific documentation is required?

The commission adopts new §113.2218, which requires the following for site-specific documentation: availability and accessibility of documents at the facility for all CISWI unit operators; establishment of a program for reviewing this information with each incinerator operator; and maintenance of specific CISWI unit operator information in the records.

§113.2219--What if all the qualified operators are temporarily not accessible?

The commission adopts new §113.2219, which states that a CISWI unit may be operated by other plant personnel familiar with the operation if all qualified operators are temporarily not accessible for more than 8 hours, but less than 2 weeks. The

adopted section also states that if all qualified operators are not accessible for 2 weeks or more, the executive director must be notified within 10 days and a status report submitted every 4 weeks following the outlined conditions and procedures.

In paragraph (2)(A), the commission has added clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission adopts the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is added in §§113.2121, 113.2243, 113.2313, and 113.2341.

§113.2220--What emission limitations must I meet and by when?

The commission adopts new §113.2220, which requires that the emission limits specified in Table 2 of Division 4 (§113.2261) be met on the date the initial performance test is required or completed.

§113.2221--What operating limits must I meet and by when?

The commission adopts new §113.2221, which describes the operating limits based on whether a wet scrubber or fabric filter is used. In both cases, the operating limits established during the initial performance test must be met on the date the initial performance test is required or completed.

For clarification and for consistency with §113.2228, the commission has added the words "hydrogen chloride" rather than HCl in subsection (a)(4).

§113.2222--What if I do not use a wet scrubber to comply with the emission limitations?

The commission adopts new §113.2222, which requires a petition to the executive director for specific operating limits to be established during the initial performance test and continuously monitored thereafter for use of an air pollution control device other than a wet scrubber. The section states that the initial performance test must not be conducted until after the petition has been approved, and specifies five items that must be included in the petition.

§113.2223--What happens during periods of startup, shutdown, and malfunction?

The commission adopts new §113.2223, which requires that emission limitations and operating limits apply at all times except during startups, shutdowns, or malfunctions of the CISWI unit. The adopted section further states that each malfunction must last no longer than 3 hours.

§113.2224--How do I conduct the initial and annual performance test?

The commission adopts new §113.2224, which details the requirements for conducting initial and annual performance tests. The requirements include conducting a minimum of three test runs, and documenting that the waste burned during the test is representative. The adopted section specifies minimum run duration and test methods. The adopted section also includes an equation regarding the pollutant concentration that must be adjusted to 7 percent oxygen, except for opacity.

§113.2225--How are the performance test data used?

The commission adopts new §113.2225, which states that the results of the performance tests must be used to determine compliance with emission limitations in Table 2 of Division 4 (§113.2261).

§113.2226--How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

The commission adopts new §113.2226, which requires an initial performance test to determine compliance with emission limitations and to establish operating limits. The adopted section states that the initial performance test must be conducted using the methods in Table 2 of Division 4 (§113.2261) and §113.2224.

§113.2227--By what date must I conduct the initial performance test?

The commission adopts new §113.2227, which requires that the initial performance test be conducted no later than 180 days after final compliance. The section further states that final compliance dates are specified in Table 1 of Division 4 (§113.2261).

The commission has also added language to clarify that the initial performance test must be conducted no later than 180 days after the deadline for the final compliance date.

§113.2228--How do I demonstrate continuous compliance with the emission limitations and the operating limits?

The commission adopts new §113.2228, which requires an annual performance test for particulate matter, hydrogen chloride, and opacity to determine compliance with emission limitations. The adopted section also states that the operating parameters must be continuously monitored and only the same types of waste used to establish the operating limits must be burned.

§113.2229--By what date must I conduct the annual performance test?

The commission adopts new §113.2229, which requires that the annual performance tests for particulate matter, hydrogen chloride, and opacity be conducted within 12 months following the initial performance test. The adopted section further states that subsequent annual performance tests must be conducted within 12 months following the previous one.

§113.2230--May I conduct performance testing less often?

The commission adopts new §113.2230, which allows performance testing to be conducted less often if there is test data for at least 3 years and all performance tests for the pollutant over 3 consecutive years show compliance. In addition, if the CISWI unit continues to meet the emission limitations, performance tests may be conducted every third year, but within 36 months of the previous performance test, unless there is a deviation.

§113.2231--May I conduct a repeat performance test to establish new operating limits?

The commission adopts new §113.2231, which allows a repeat performance test to establish new values for operating limits. The performance test must be repeated if the feed stream is different than the feed streams during any performance test used to demonstrate compliance.

§113.2232--What monitoring equipment must I install and what parameters must I monitor?

The commission adopts new §113.2232, which specifies that if a wet scrubber is used to comply with emission limitations, devices for monitoring the value of the operating parameters must be installed, calibrated, maintained, and operated so that the wet scrubber complies with the operating limits listed in Table 3 of Division 4 (§113.2261). The adopted section states that if a fabric filter is used, a bag leak detection system must be installed, cal-

ibrated, maintained, and continuously operated as specified in this section and if something other than a wet scrubber is used, equipment necessary to monitor compliance must be installed, calibrated, maintained, and operated.

§113.2233--Is there a minimum amount of monitoring data I must obtain?

The commission adopts new §113.2233, which requires that all monitoring be conducted at all times the CISWI unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities.

§113.2234--What records must I keep?

The commission adopts new §113.2234, which specifies the 13 items that must be recorded and maintained: calendar date of each record; records of various types of data; identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control; identification of calendar dates, times, and durations of malfunctions; identification of calendar dates and times for which data show a deviation from the operating limits in Table 3 of this division (§113.2261); the results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable; records showing the names of CISWI unit operators who have completed review of the required site-specific documentation; records showing the names of CISWI unit operators who have completed the operator training requirements, met the criteria for qualification, and maintained or renewed qualification; for each qualified operator, a phone and pager number; records of calibration of any required monitoring devices; equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment; the information listed in §113.2218(a); and on a daily basis, a log of the quantity of waste burned and the types of waste burned. The section states that these records must be maintained for at least 5 years.

§113.2235--Where and in what format must I keep my records?

The commission adopts new §113.2235, which requires that records be available onsite, and in either paper or electronic format that can be printed upon request, unless an alternative format is approved by the executive director.

§113.2236--What reports must I submit?

The commission adopts new §113.2236, which states that the reporting requirements summary is contained in Table 5 of Division 4 (§113.2261).

§113.2237--When must I submit my waste management plan?

The commission adopts new §113.2237, which states that the dates for submittal of the waste management plan are located in Table 1 of Division 4 (§113.2261) for submittal of the final control plan.

§113.2238--What information must I submit following my initial performance test?

The commission adopts new §113.2238, which details the information that must be submitted no later than 60 days following the initial performance test. The adopted section states that these reports must be signed by the facilities manager.

§113.2239--When must I submit my annual report?

The commission adopts new §113.2239, which states that annual reports must be submitted no later than 12 months following the submittal of the information in §113.2238. The section also states that subsequent reports must be submitted no later than 12 months following the previous report.

§113.2240--What information must I include in my annual report?

The commission adopts new §113.2240, which details the ten items that must be included in the annual report. The ten items listed include: company name and address; statement by a responsible official, along with the official's name, title, and signature; date of report and beginning and ending dates of the reporting period; the values for the operating limits; if no deviation from any emission limitation or operating limit that applies to the owner or operator has been reported, a statement to that effect; the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded by calendar year; information recorded under §113.2234(2)(F) and (3) through (5), by calendar year; if a performance test was conducted during the reporting period, the results of that test; if the requirements of §113.2230(a) or (b) were met, and a performance test was not conducted during the reporting period, a statement that the requirements of §113.2230(a) or (b) were met; and documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks. The section also states that deviation reports must be submitted to record a deviation from the operating limits or the emission limitations.

§113.2241--What else must I report if I have a deviation from the operating limits or the emission limitations?

The commission adopts new §113.2241, which states that a deviation report must be submitted if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this division, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation. The adopted section specifies that the deadline is August 1 for the first half of the calendar year, and February 1 for the second half of the calendar year.

§113.2242--What must I include in the deviation report?

The commission adopts new §113.2242, which details the six items that must be included in the deviation report: the calendar dates and times the unit deviated from the emission limitations or operating limit requirements; the averaged and recorded data; the duration and causes of each deviation from the emission limitations or operating limits and corrective actions; a copy of the operating limit monitoring date during each deviation and any test report that documents the emission levels; the dates, times, number, duration, and causes for monitoring downtime incidents; and whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§113.2243--What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

The commission adopts new §113.2243, which requires that if all qualified operators are not accessible for 2 weeks or more, a notification of the deviation must be submitted within 10 days and a status report must be submitted to the executive director every 4 weeks. The adopted section also states that a unit that was shut down by the executive director because of a failure to provide an accessible qualified operator requires notification to

the executive director once operations resume and a qualified operator is accessible.

In subsection (a)(1), the commission has added clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission adopts the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification is added in §§113.2121, 113.2219, 113.2313, and 113.2341.

§113.2244--Are there any other notifications or reports that I must submit?

The commission adopts new §113.2244, which requires that notifications or reports be submitted as required by 40 CFR §60.7 (Notification and record keeping).

§113.2245--In what form can I submit my reports?

The commission adopts new §113.2245, which allows initial, annual, and deviation reports to be submitted electronically or in paper format. The adopted section also specifies that reports must be postmarked on or before the submittal due dates.

§113.2246--Can reporting dates be changed?

The commission adopts new §113.2246, which allows semiannual or annual reporting dates to be changed if approved by the executive director. The section references 40 CFR §60.19(c) for procedures to seek approval to change a reporting date.

§113.2247--Am I required to apply for and obtain a Title V operating permit for my unit?

The commission adopts new §113.2247, which requires each CISWI unit owner or operator to obtain a Title V permit. As required by the model rule, the Title V application submittal date is based either on the promulgation of 40 CFR Part 60, Subpart DDDD (December 1, 2003), or on the effective date of the Title V permit program to which the unit is subject.

For further clarity and precision, the commission has changed the reference to the deadlines "noted above" in paragraph (2) to the deadlines noted in "this section."

§113.2248--What is an air curtain incinerator?

The commission adopts new §113.2248, which states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. The adopted section further states that incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

In particular, the commission notes that 40 CFR §60.2555 (What combustion units are exempt from my State plan?) and this section have added some confusion to whether air curtain incinerators are obligated to apply for and obtain Title V permits, since both sections provide that air curtain incinerators that burn only 100 percent wood waste, 100 percent clean lumber, and 100 percent mixture of only wood waste, clean lumber, and/or yard waste must only meet the requirements under §§60.2810 - 60.2870, which do not include the requirement to apply for and obtain a Title V operating permit. However, the federal plan for these sources, 40 CFR Part 62, Subpart III, §62.14525, requires that air curtain incinerators that burn 100 percent wood waste, 100 percent clean lumber, and 100 percent mixture of only wood waste, clean lumber, and/or yard waste must meet only the requirements of §§62.14765 - 62.14825 *and the Title V operating permit requirements of Subpart 62*. Therefore, to further clarify the requirements for air curtain incinerators under §113.2248, the commission has added the following sentence at the end of subsection (b): "In addition, air curtain incinerators must meet the requirements of §113.2247 of this title (relating to Am I required to apply for and obtain a Title V operating permit for my unit?)."

§113.2249--What are my requirements for meeting increments of progress and achieving final compliance?

The commission adopts new §113.2249, which states that two increments of progress must be met if achieving compliance more than one year following the effective date of state plan approval: a final control plan must be submitted; and final compliance must be achieved.

§113.2250--When must I complete each increment of progress?

The commission adopts new §113.2250, which specifies that the compliance dates for each increment of progress are contained in Table 1 of Division 4 (§113.2261).

§113.2251--What must I include in the notifications of achievement of increments of progress?

The commission adopts new §113.2251, which states what must be included in the notification of achievement of increments of progress: notification of the achievement; any items required to be submitted with each increment of progress; and signature of the owner or operator of the incinerator.

§113.2252--When must I submit the notifications of achievement of increments of progress?

The commission adopts new §113.2252, which requires that the notifications of achievement of increments of progress be postmarked no later than 10 business days after the compliance date for the increment.

§113.2253--What if I do not meet an increment of progress?

The commission adopts new §113.2253, which states that if an increment of progress is not met, a notification must be submitted to the executive director postmarked within 10 business days after the date for that increment of progress. The adopted section further states that the submittal of reports must continue for each subsequent calendar month until the increment of progress is met.

§113.2254--How do I comply with the increment of progress for submittal of a control plan?

The commission adopts new §113.2254, which states that a control plan increment of progress must include submitting a final control plan and maintaining a copy onsite.

§113.2255--How do I comply with the increment of progress for achieving final compliance?

The commission adopts new §113.2255, which requires that all process changes and retrofit construction of control devices be completed for the final compliance increment of progress.

§113.2256--What must I do if I close my air curtain incinerator and then restart it?

The commission adopts new §113.2256, which states that if the incinerator is closed, but will reopen before the final compliance date, the increments of progress must be met. If the incinerator will restart after the final compliance date, emission control retrofits must be completed and emission limitations met on the date the incinerator restarts.

§113.2257--What must I do if I plan to permanently close my air curtain incinerator and not restart it?

The commission adopts new §113.2257, which states that if the incinerator will be closed rather than comply with the state plan, a closure notification must be submitted to the executive director by the date the final control plan is due.

§113.2258--What are the emission limitations for air curtain incinerators?

The commission adopts new §113.2258, which states that air curtain incinerators must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation. The adopted section states that the requirements apply at all times except during malfunctions, and each malfunction must not exceed three hours.

§113.2259--How must I monitor opacity for air curtain incinerators?

The commission adopts new §113.2259, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A to determine compliance with the opacity limit. The adopted section states that an initial test must be conducted no later than 180 days after the final compliance date, and that annual tests must be conducted thereafter, no more than 12 calendar months following the date of the previous test.

As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of the proposal preamble, there would be costs associated with training for conducting opacity testing.

§113.2260--What are the recordkeeping and reporting requirements for air curtain incinerators?

The commission adopts new §113.2260, which requires that records of opacity test results be maintained onsite for at least 5 years. The adopted section states that all records must be made available for submittal to the executive director or for an inspector's onsite review. Finally, the adopted section requires that an initial report be submitted no later than 60 days following the initial opacity test and that annual opacity test results be submitted within 12 months following the previous report.

§113.2261--Tables Relating to Division 4.

The commission adopts new §113.2261, which contains the tables as referenced in Division 4. The tables include the following: Increments of Progress and Compliance Schedules; Emission Limitations; Operating Limits for Wet Scrubbers; Toxic Equivalency Factors; and Summary of Reporting Requirements.

Table 1 specifies the compliance schedules and increments of progress for units subject to this division. Increment 1 is for submission of the final control plan, and the compliance date is no later than 12 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval. Increment 2 is for final compliance, and the compliance date is no later than 36 months from the date the TCEQ publishes notice in the *Texas Register* of state plan approval.

To clarify and simplify the information in the tables contained in this section, the commission adopts minor formatting changes and has also deleted information that may confuse regulated entities, such as references to past federal compliance dates.

Division 5, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (40 CFR Part 60, Subpart FFFF)

§113.2300--Definitions.

The commission adopts new §113.2300, which defines terms used in new Division 5 that are either previously undefined or are used differently by the federal emission guidelines that are the basis for the rules. The definitions are taken from 40 CFR §60.3078 (What definitions must I know?).

For clarification, the commission has modified paragraph (1)(C), under the definition of administrator. The commission has added that the NSPS are located within 40 CFR Part 60.

Also for clarification, the commission has modified paragraph (2), under the definition of air curtain incinerator. This definition contains a reference both to Division 5 and to 40 CFR Part 60, Subpart EEEE. The commission has deleted the subpart reference, because Subpart EEEE applies to new sources, not existing sources, which is the subject of Division 5. The definition of MWC unit, paragraph (28), contains a similar reference to Subpart EEEE, and the commission has also deleted the subpart reference.

§113.2301--When must I comply?

The commission adopts new §113.2301, which specifies the final compliance date in Table 1 of Division 5 (§113.2357), as December 16, 2010. The adopted section also states that notification of final compliance must be submitted to the executive director and postmarked within 10 business days after the final compliance date.

§113.2302--What must I do if I close my other solid waste incineration unit and then restart it?

The commission adopts new §113.2302, which requires achievement of final compliance by the date specified in Table 1 of Division 5 (§113.2357) if the OSWI unit closes and then will restart before this date. If the OSWI unit will restart after the final compliance date, an emission control retrofit must be completed and emission limitations met when the OSWI restarts.

§113.2303--What must I do if I plan to permanently close my other solid waste incineration unit and not restart it?

The commission adopts new §113.2303, which states that an OSWI unit must permanently close before the final compliance date specified in Table 1 of Division 5 (§113.2357).

§113.2304--What is a waste management plan?

The commission adopts new §113.2304, which states that a waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

§113.2305--When must I submit my waste management plan?

The commission adopts new §113.2305, which requires that a waste management plan be submitted no later than 60 days following the initial performance test as specified in Table 5 of Division 5 (§113.2357).

§113.2306--What should I include in my waste management plan?

The commission adopts new §113.2306, which specifies what must be included in the waste management plan. The adopted

section includes the following components: consideration of the reduction or separation of waste-stream elements; and identification of additional waste management measures and implementation of those measures that are considered practical and feasible, based on certain specific criteria.

§113.2307--What are the operator training and qualification requirements?

The commission adopts new §113.2307, which does not allow an OSWI unit to be operated unless a fully trained and qualified OSWI unit operator is accessible to the facility within 1 hour. The adopted section also states that operator training and qualification must be obtained through a state-approved program or by completing an incinerator operator training course that includes at least three of the elements listed. The elements include: training on 13 specified subjects; an examination designed and administered by the instructor; and written material covering the training course topics that may be a reference following completion of the course.

§113.2308--When must the operator training course be completed?

The commission adopts new §113.2308, which requires that the operator training be completed by the latest of the following three dates: the final compliance date as specified in Table 1 of Division 5 (§113.2357); six months after OSWI unit startup; or six months after an employee assumes responsibility for operating the OSWI unit or for supervising operation of the OSWI unit.

§113.2309--How do I obtain my operator qualification?

The commission adopts new §113.2309, which requires that operator qualification be obtained by completing a training course that satisfies certain criteria. The adopted section further states that qualification is valid from the date on which the training course is completed and the operator successfully passes the required examination. As stated in §113.2310, operators must complete an annual review or refresher course to maintain qualification.

§113.2310--How do I maintain my operator qualification?

The commission adopts new §113.2310, which states that to maintain operator qualification, an annual review or refresher course must be completed. The adopted section specifies that, at a minimum, five topics must be included: update of regulations; incinerator operation; inspection and maintenance; responses to malfunctions; and operating problems.

§113.2311--How do I renew my lapsed operator qualification?

The commission adopts new §113.2311, which states that if operator qualification lapses for less than 3 years, a standard annual refresher course must be completed. The adopted section states that if the lapse is 3 years or more, the initial qualification requirements must be repeated.

§113.2312--What site-specific documentation is required?

The commission adopts new §113.2312, which describes the site-specific documentation that is required to be in compliance. The adopted section specifies nine types of documents that must be available at the facility and readily accessible for all OSWI unit operators. The adopted section further states that a program for reviewing the information must be established with each incinerator operator by the dates specified. Finally, the adopted section includes the required training records.

§113.2313--What if all the qualified operators are temporarily not accessible?

The commission adopts new §113.2313, which states that depending on the length of time the qualified operator is not accessible, one of three criteria must be met. The criteria are: for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit; for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit; however, records of the period when the qualified operator was not accessible must be maintained and reported; for 2 weeks or more, the executive director must be notified of the deviation in writing within 10 days and status reports must be provided to the EPA every 4 weeks. The adopted section also states that status reports must outline what is being done to ensure that a qualified operator is accessible, when a qualified operator might be accessible, and contain a request for approval to continue operation.

In paragraph (3)(A), the commission has added clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is not accessible. The commission adopts the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification has been added in §§113.2121, 113.2219, 113.2243, and 113.2341.

In paragraph (3)(B) and in paragraph (3)(B)(ii), the commission has changed the recipient of status reports and approval of continued operation from the EPA, as is stated in 40 CFR Part 60, Subpart FFFF, to the executive director. The commission adopts this change so that this section is consistent with §113.2121 (40 CFR §60.1685, Subpart BBBB) and with §113.2219 (40 CFR §60.2665, Subpart DDDD). The commission also adopts this change because it is appropriate that the TCEQ be informed of changes in the status of qualified operators for consistent and effective enforcement of the rules.

§113.2314--What emission limitations must I meet and by when?

The commission adopts new §113.2314, which states that the emission limitations that must be met on the date the initial performance test is required or completed are specified in Table 2 of Division 5 (§113.2357).

§113.2315--What operating limits must I meet and by when?

The commission adopts new §113.2315, which, for wet scrubbers, requires that operating limits for four operating parameters be established: maximum charge rate; minimum pressure drop across the wet scrubber; minimum scrubber liquor flow rate; and minimum scrubber liquor pH. The operating limits established during the initial performance test must be met beginning on the date 180 days after the final compliance date.

§113.2316--What if I do not use a wet scrubber to comply with the emission limitations?

The commission adopts new §113.2316, which states that if an air pollution control device other than a wet scrubber is used, or emissions are limited in some other manner to comply with the emission limitations, a petition must be submitted to the EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. The adopted section states that an initial performance test must not be conducted until after the petition

has been approved by the EPA. A listing of what must be included in the petition is detailed in this section.

§113.2317--What happens during periods of startup, shutdown, and malfunction?

The commission adopts new §113.2317, which states that emission limitations and operating limits apply at all times, except during OSWI unit startups, shutdowns, or malfunctions.

For clarification, the commission has added that OSWI unit startups, shutdowns, and malfunctions must last no longer than 3 hours. This additional language will make this section consistent with similar sections in Division 3 (§113.2123) and Division 4 (§113.2223).

§113.2318--How do I conduct the initial and annual performance test?

The commission adopts new §113.2318, which requires that all performance tests be conducted using the methods and specifications listed in this section to be in compliance.

§113.2319--How are the performance test data used?

The commission adopts new §113.2319, which requires that the results of performance tests be used to demonstrate compliance with the emission limits in Table 2 of Division 5 (§113.2357).

§113.2320--How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

The commission adopts new §113.2320, which requires that an initial performance test be conducted to determine compliance with the emission limitations and to establish operating limits. The adopted section states that the requirements for emission limitations and the test methods for the initial performance test are found in Table 2 of Division 5 (§113.2357).

§113.2321--By what date must I conduct the initial performance test?

The commission adopts new §113.2321, which requires that the initial performance test be conducted no later than 180 days after the final compliance date listed in Table 1 of Division 5 (§113.2357).

§113.2322--How do I demonstrate continuous compliance with the emission limitations and the operating limits?

The commission adopts new §113.2322, which requires that an annual performance test be conducted for all the pollutants in Table 2 of Division 5 (§113.2357) for each OSWI unit to determine compliance with the emission limits. The adopted section also states that to determine compliance with the carbon monoxide limits, carbon monoxide emissions and operating parameters must be continuously monitored.

§113.2323--By what date must I conduct the annual performance test?

The commission adopts new §113.2323, which requires that annual performance tests be conducted within 12 months of the initial performance test. The adopted section also states that subsequent annual performance tests must be conducted within 12 months following the previous one.

§113.2324--May I conduct performance testing less often?

The commission adopts new §113.2324, which allows performance tests to be conducted less often for a given pollutant if test data exists for at least three consecutive annual tests, and all performance tests over that period show compliance with the emission limit. The adopted section further states that if a performance test shows a deviation from an emission limitation for any pollutant, annual tests must be conducted for that pollutant until three consecutive annual performance tests for that pollutant all demonstrate compliance.

§113.2325--May I conduct a repeat performance test to establish new operating limits?

The commission adopts new §113.2325, which allows a repeat performance test to be conducted at any time to establish new operating limits. The adopted section also states that the executive director may request a repeat performance test at any time.

§113.2326--What continuous emission monitoring systems must I install?

The commission adopts new §113.2326, which requires that continuous emission monitoring systems be installed, calibrated, maintained, and operated for carbon monoxide and oxygen. The adopted section states that each continuous emission monitoring system must be in compliance with 40 CFR §60.13.

§113.2327--How do I make sure my continuous emission monitoring systems are operating correctly?

The commission adopts new §113.2327, which details the four requirements for ensuring that the continuous emission monitoring systems are operating correctly. The adopted section specifies evaluation and quality assurance procedures that must be followed.

For clarification in subsection (c), the commission has specified that the reference to EPA Method 3 or 3A is located in 40 CFR Part 60, Appendix A.

§113.2328--What is my schedule for evaluating continuous emission monitoring systems?

The commission adopts new §113.2328, which requires that annual evaluations of the continuous emission monitoring systems be conducted no more than 12 months after the previous evaluation. The adopted section also states that daily and quarterly evaluations must be conducted in accordance with 40 CFR Part 60, Appendix F.

§113.2329--What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?

The commission adopts new §113.2329, which details the minimum amount of monitoring data that is required to be collected from the continuous emission monitoring systems to be in compliance. The adopted section also states that a failure to obtain the minimum required data is a deviation from the data collection requirement. The adopted section further references Table 4 in Division 5 (§113.2357) for alternatives if continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements.

§113.2330--How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

The commission adopts new §113.2330, which requires the use of equations in 30 TAC §113.2356 (What equations must I use?) to calculate emissions at 7 percent oxygen and the 12-hour rolling averages for concentrations of carbon monoxide.

§113.2331--What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?

The commission adopts new §113.2331, which specifies required procedures for using a wet scrubber or a method or air pollution control device other than a wet scrubber to comply with the emission limitations.

§113.2332--Is there a minimum amount of operating parameter monitoring data I must obtain?

The commission adopts new §113.2332, which requires that monitoring be conducted at all times the OSWI unit is operating, except for monitor malfunctions, associated repairs, and required quality assurance or control activities. The adopted section states that valid data must be obtained for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter and that to not obtain the minimum data is a deviation.

§113.2333--What records must I keep?

The commission adopts new §113.2333, which lists the 14 items that must be maintained for a period of at least 5 years: the calendar date of each record; several types of records as specified in the section; an identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control; an identification of calendar dates, times, and durations of malfunctions; an identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 2 of this division (§113.2357) or a deviation from the operating limits in Table 3 of this division (§113.2357) or a deviation from other operating limits established under §113.2316; calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §113.2329 and §113.2332; for carbon monoxide continuous emissions monitoring systems, documentation of the results of the daily drift tests and quarterly accuracy determinations; records of the calibration of any monitoring devices required under §113.2331; the results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable; records showing the names of OSWI unit operators who have completed review of the information in §113.2312(a) as required by §113.2312(b); records showing the names of the OSWI unit operators who have completed the operator training requirements under §113.2307, met the criteria for qualification under §113.2309, and maintained or renewed their qualification under §113.2310 or §113.2311; for each qualified operator, the phone and/or pager number at which the operator can be reached; equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment; and the information listed in §113.2312(a).

§113.2334--Where and in what format must I keep my records?

The commission adopts new §113.2334, which requires that records be maintained on site for at least 2 years. The adopted section states that the records may be maintained off site for the remaining 3 years, and that all records must be in paper or electronic format that can be printed upon request, unless an alternative format has been approved by the executive director.

For clarification, the commission has stated at the beginning of subsection (a) that each record must be maintained for at least 5 years. This additional language ensures that there is no conflict with the requirements of §113.2333.

§113.2335--What reports must I submit?

The commission adopts new §113.2335, which states that reporting requirements are located in Table 5 of Division 5 (§113.2357).

§113.2336--What information must I submit following my initial performance test?

The commission adopts new §113.2336, which states that the following information must be submitted no later than 60 days following the initial performance test: the complete test report; values for the site-specific operating limits; and the waste management plan.

§113.2337--When must I submit my annual report?

The commission adopts new §113.2337, which requires that the annual report be submitted no later than 12 months following the submission of information required in §113.2336. The adopted section further states that subsequent reports must be submitted no more than 12 months following the previous report.

§113.2338--What information must I include in my annual report?

The commission adopts new §113.2338, which lists the 10 items that are required to be included in the annual report to be in compliance: company name and address; statement by the owner or operator certifying the truth, accuracy, and completeness of the report; the date of the report and beginning and ending dates of the reporting period; the values for the operating limits; if no deviation from any emission limitation or operating limit that applies to the owner or operator has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period; the highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported; information recorded under §113.2333(2)(F) and (3) through (5) for the calendar year being reported; if a performance test was conducted during the reporting period, the results of that test; if the requirements of §113.2324(a) or (b) were met, and a performance test was not conducted during the reporting period, a statement that the requirements of §113.2324(a) or (b) were met, and therefore, a performance test was not required during the reporting period; and documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than 2 weeks.

To clarify and simplify the requirements of this section, the commission has deleted the reference to 40 CFR Part 71 in paragraph (2), since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

§113.2339--What else must I report if I have a deviation from the operating limits or the emission limitations?

The commission adopts new §113.2339, which requires that a deviation report be submitted if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted that showed a deviation from any emission limitation. The adopted section also states that the deviation report must be submitted by August 1 of the year the data was collected during the first half of the calendar year (January 1 to June 30), and

by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

§113.2340--What must I include in the deviation report?

The commission adopts new §113.2340, which details the seven items that must be included in deviation reports for any pollutant or operating parameter that deviated from the emission limitations or operating limits: the calendar dates and times the unit deviated from the emission limitations or operating limit requirements; the averaged and recorded data for those dates; durations and causes of each deviation from the emission limitations or operating limits and your corrective actions; a copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels; the dates, times, number, duration, and causes for monitor downtime incidents; whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period; and the dates, times, and durations of any bypass of the control device.

§113.2341--What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

The commission adopts new §113.2341, which states that if all qualified operators are not accessible for 2 weeks or more, a notification of deviation must be submitted within 10 days and a status report must be submitted to the EPA every 4 weeks. In addition, the adopted section states that a request must be submitted to the EPA to continue operation of the OSWI unit. The adopted section further states that the EPA must be notified once a qualified operator is accessible and operations have resumed if the unit was shut down by the EPA due to a failure to provide an accessible qualified operator.

In subsection (a)(1), the commission has added clarification that the notification to the executive director must be done within 10 days after the end of the 2-week period in which a certified operator is required to be onsite. The commission adopts the clarification regarding the beginning of the 10-day period to clearly outline the rule requirements for regulated entities, and similar clarification has been added in §§113.2121, 113.2219, 113.2243, and 113.2313.

In subsection (a)(2), subsection (a)(2)(C), and in subsection (b), the commission has changed the recipient of status reports and approval of continued operation from the EPA, as is stated in 40 CFR Part 60, Subpart FFFF, to the executive director. The commission adopts this change so that this section is consistent with §113.2243 (40 CFR §60.2785, Subpart DDDD). The commission also adopts this change because it is appropriate that the TCEQ be informed of changes in the status of qualified operators for consistent and effective enforcement of the rules.

§113.2342--Are there any other notifications or reports that I must submit?

The commission adopts new §113.2342, which requires that the notifications in 40 CFR §60.7 also be submitted.

§113.2343--In what form can I submit my reports?

The commission adopts new §113.2343, which requires that initial, annual, and deviation reports be submitted electronically or in paper format, postmarked on or before the submittal due dates.

§113.2344--Can reporting dates be changed?

The commission adopts new §113.2344, which states that if the executive director agrees, the semiannual and annual reporting dates may be changed. The adopted section references 40 CFR §60.19(c) for the required procedures to seek approval to change a reporting date.

§113.2345--Am I required to apply for and obtain a Title V operating permit for my unit?

The commission adopts new §113.2345, which states that unless you meet the requirements for an exemption in 40 CFR §60.2993 (Are any combustion units excluded from my State plan?), if you are subject to an applicable EPA-approved and effective FCAA, §111(d)/129 state or tribal plan or an applicable and effective federal plan, you are required to apply for and obtain a Title V operating permit. The rules in this division require that owners or operators of air curtain incinerators obtain a Title V permit; however, these units are only required to comply with limited requirements, as opposed to larger entities.

§113.2346--When must I submit a Title V permit application for my existing unit?

The commission adopts new §113.2346, which provides the specific dates that a Title V permit application must be submitted for existing units: 12 months after the effective date of any applicable EPA-approved FCAA, §111(d)/129 state or tribal plan; 12 months after the effective date of any applicable federal plan; or December 16, 2008, whichever is earlier. Because there is currently no approved state or federal plan, December 16, 2008, is the required submission date for federal operating permit applications.

To clarify and simplify the requirements of this section, the commission has deleted references to 40 CFR Part 71 in subsections (a), (c), and (d), since federal requirements are contained within this part and they are not necessary for state implementation of the rules.

§113.2347--What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

The commission adopts new §113.2347, which states that temporary-use incinerators and air curtain incinerators used in disaster recovery are exempt from Division 5 if they follow certain requirements. The adopted section defines a disaster or emergency as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism, and specifies that the exclusion only applies in an area declared a State of Emergency. The adopted section specifies the periods of time and required notifications for the exclusion from the rules in Division 5.

§113.2348--What is an air curtain incinerator?

The commission adopts new §113.2348, which states that an air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. The adopted section also states that air curtain incinerators used to burn only 100 percent wood waste, clean lumber, yard waste, or a mixture of the three materials are required to meet only the requirements in §§113.2348 - 113.2355.

For clarification, the commission has modified the wording in subsection (a), which contains a reference both to Division 5 and to 40 CFR Part 60, Subpart EEEE. The commission has deleted the subpart reference, because Subpart EEEE applies to new sources, not existing sources, which is the subject of Division 5.

§113.2349--When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?

The commission adopts new §113.2349, which requires air curtain incinerators that burn only wood waste, clean lumber, and yard waste to comply with the final compliance date listed in Table 1 of Division 5 (§113.2357). The adopted section states that notification to the executive director is required and must be postmarked within 10 business days after the final compliance date.

§113.2350--What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?

The commission adopts new §113.2350, which states that if the incinerator is closed, but will reopen before the final compliance date, the final compliance date specified in Table 1 of Division 5 (§113.2357) must be met. If the incinerator is closed, but will restart after the final compliance date, the emission limitations must be met on the date the incinerator restarts operation.

§113.2351--What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?

The commission adopts new §113.2351, which states that if the incinerator is permanently closed and will not restart, the unit must be closed before the final compliance date listed in Table 1 of Division 5 (§113.2357).

§113.2352--What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

The commission adopts new §113.2352, which states that within 180 days after the final compliance date in Table 1 of Division 5 (§113.2357), air curtain incinerators that burn only wood waste, clean lumber, and yard waste must meet an opacity limit of 10 percent (6-minute average) and 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

Upon adoption, for clarification, the commission has added in subsection (b) that malfunctions must last no longer than 3 hours. This additional language will make this section consistent with similar sections in Division 3 (§113.2123), Division 4 (§113.2223), and Division 5 (§113.2317).

§113.2353--How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

The commission adopts new §113.2353, which requires the use of EPA Reference Method 9 in 40 CFR Part 60, Appendix A, to determine compliance with the opacity limit. An initial test would be conducted within 180 days after the final compliance date, and annual tests conducted thereafter. As discussed in the FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT portion of the proposal preamble, there would be costs associated with training for conducting opacity testing.

§113.2354--What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

The commission adopts new §113.2354, which requires that records of results of all initial and annual opacity test results, as well as a copy of the initial and annual reports, be maintained for at least 5 years. The adopted section also states that records of results must be kept in either paper copy or computer-readable format that can be printed upon request, and that all records must be made available to the executive director or for an inspector's review. The adopted section further states that an initial report must be submitted no later than 60 days following the initial opacity test and annual opacity test results must be submitted within 12 months following the previous report. As specified in the adopted section, initial and annual opacity test reports must be submitted as electronic or paper copy on or before the applicable submittal date.

§113.2355--Am I required to apply for and obtain a Title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

The commission adopts new §113.2355, which specifies that if the air curtain incinerator is subject to Division 5, an application for a Title V operating permit must be submitted. 40 CFR §60.2993 contains a listing of types of units that are excluded from the requirements of the state plan, as long as the owner or operator meets the requirements of 40 CFR §60.2993.

§113.2356--What equations must I use?

The commission adopts new §113.2356, which contains the two equations that must be used in Division 5. The equations are for determining the following: pollutant concentration adjusted to 7 percent oxygen and average carbon monoxide pollutant rate for each 12-hour period.

For clarification and for consistency with the equation contained within subsection (a), the commission has used the word "oxygen," rather than using O_2 in subsection (d).

§113.2357--Tables Relating to Division 5.

The commission adopts new §113.2357, which contains the tables relating to Division 5. The tables are as follows: Compliance Schedule; Emission Limitations; Operating Limits for Incinerators and Wet Scrubbers; Requirements for Continuous Emission Monitoring Systems (CEMS); and Summary of Reporting Requirements.

Table 1 specifies the compliance schedule for units subject to this division. Final compliance is required by December 16, 2010.

To clarify and simplify the information in the tables contained in this section, the commission adopts minor formatting changes and has also deleted information that may confuse regulated entities, such as references to past federal compliance dates.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these rules is to adopt emission guidelines for existing certain solid waste incineration units mandated by 42 United States Code (USC), and required to be included in operating permits by 42 USC, §7661a, as specified elsewhere in this preamble. These sources are required to comply with the emission guidelines whether or not the commission adopts the emission guidelines or takes delegation from the EPA, due to the federal plans that are adopted by the EPA to implement and enforce the emis-

sion guidelines if states do not adopt state plans to do so. As discussed in the FISCAL NOTE portion of the proposal preamble, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including emission guidelines, which are required under 42 USC, §7429. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Additionally, states are required by 42 USC, §7429 to adopt and implement plans to implement and enforce emission guidelines.

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

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the adopted rules do not modify the federal emission guidelines in any substantive aspect, but merely provide for minor administrative changes as described elsewhere in this preamble. For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

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

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

The adopted rules implement requirements of the FCAA. The emission guidelines being incorporated into state law are federal standards that are required by 42 USC, §7429, required to be included in permits under 42 USC, §7661a, adopted with only minor administrative changes, and will not exceed any standard set by state or federal law. These rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate implementation and enforcement of the emission guidelines to Texas if this rulemaking is adopted. The new rules were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this adopted rule-

making action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission did not receive any comments.

TAKINGS IMPACT ASSESSMENT

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

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to adopt emission guidelines for certain solid waste incineration units, as specified elsewhere in this preamble, mandated by 42 USC, §7429 and required to be included in operating permits by 42 USC, §7661a and facilitate implementation and enforcement of the emission guidelines by the state. The adopted rules will not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the emission guidelines regardless of whether the commission or the EPA is the agency responsible for implementation of the emission guidelines. The adopted rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the adopted rules is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). These rules are consistent because the emission guidelines incorporated through this rulemaking implement state rules that are as strict as the minimum emission guidelines found in 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission did not receive any comments.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 113 is an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program). Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 113 requirements. Additionally, sources subject to the emission guidelines may become subject to the federal operating permit program.

PUBLIC COMMENT

The commission held a public hearing on the proposed Chapter 113 rules and FCAA, §111(d)/129 State Plan in Austin, Texas, on January 5, 2009. The comment period closed January 7, 2009. The commission received one written comment on the proposed rulemaking, and it was from the U.S. Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

The EPA commented that it strongly supports the proposed rule revision and the EPA also stated that it believes the Chapter 113 amendments to be in compliance with 40 CFR Part 60, Subparts BBBB, DDDD, and FFFF.

The commission appreciates the EPA's support of the proposed rules and state plan.

DIVISION 3. EMISSION GUIDELINES AND COMPLIANCE TIMES FOR SMALL MUNICIPAL WASTE COMBUSTION UNITS CONSTRUCTED ON OR BEFORE AUGUST 30, 1999

30 TAC §§113.2100 - 113.2174

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare,

and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also adopted under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The adopted new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: November 21, 2008
For further information, please call: (512) 239-2548

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DIVISION 4. EMISSIONS GUIDELINES AND COMPLIANCE TIMES FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS THAT COMMENCED CONSTRUCTION ON OR BEFORE NOVEMBER 30, 1999

30 TAC §§113.2200 - 113.2261

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also adopted under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The adopted new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. EMISSION GUIDELINES AND COMPLIANCE TIMES FOR OTHER SOLID WASTE INCINERATION UNITS THAT COMMENCED CONSTRUCTION ON OR BEFORE DECEMBER 9, 2004

30 TAC §§113.2300 - 113.2357

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new sections are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air;

§382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act. The new sections are also adopted under the Texas Water Code, §7.002, Enforcement Authority, which authorizes the commission to institute legal proceedings to compel compliance; §7.032, Injunctive Relief, which provides that injunctive relief may be sought by the executive director; and §7.302, Grounds for Revocation or Suspension of Permit, which provides authority to the commission to revoke or suspend any air quality permit.

The adopted new sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.2317. What happens during periods of startup, shutdown, and malfunction?

The emission limitations and operating limits apply at all times except during other solid waste incineration unit startups, shutdowns, or malfunctions, which must last no longer than 3 hours.

§113.2352. What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Within 180 days after your final compliance date in Table 1 in §113.2357 of this title (relating to Tables Relating to Division 5), you must meet the two limitations specified in paragraphs (1) and (2) of this subsection.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (2) of this subsection.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in subsection (a) of this section apply at all times except during malfunctions, which must last no longer than 3 hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

The Texas Parks and Wildlife Commission adopts the repeal of §65.176, an amendment to §65.175, and new §65.176 and §65.177, concerning Threatened and Endangered Nongame Species. Sections 65.175 and 65.176 are adopted with changes to the proposed text as published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10296). The repeal of §65.176 and new §65.177 are adopted without changes and will not be republished.

The change to §65.175 corrects the spelling of the scientific name of the margay.

The change to §65.176 corrects the spelling of the scientific names of the jaguarundi and the West Indian manatee.

The repeal of §65.176, concerning Violations and Penalties, is necessary to relocate the contents of that section in new §65.177, concerning Violations and Penalties. The amendment to §65.175, concerning Threatened Species, adds the San Felipe gambusia *(Gambusia clarkhubbsi)* to the list of threatened species and removes the Arctic peregrine falcon *(Falco peregrinus tundrius)* from the same list. New §65.176, concerning Endangered Species, would incorporate by rule the list of species indigenous to Texas that are listed by the federal government as endangered. New §65.177, concerning Violations and Penalties, contains the provisions of current §65.176, which has been repealed in order to create a place for new §65.176.

Under current rule, a species of fish and wildlife is designated as threatened if the department has determined that it is "likely to become endangered in the future." The department establishes this status by rule under authority of Parks and Wildlife Code, Chapter 67, which authorizes regulations to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that department consider necessary to manage a species. Since the threatened species list is adopted by rule, the provisions of the Administrative Procedure Act apply, including the requirement that a state agency give at least 30 days' notice of its intention to adopt a rule.

Under Parks and Wildlife Code, Chapter 68, a species is endangered under state law if it is 1) indigenous to Texas and listed by the federal government as endangered, or 2) designated by the executive director of the Texas Parks and Wildlife Department as "threatened with statewide extinction." At the current time, there are no species listed by the executive director as "threatened with statewide extinction;" therefore, the only species designated as endangered in Texas are those that are listed by the federal government. Under Chapter 68, the department is not required to list federally endangered species by rule; however, whenever the federal government modifies the list of endangered species, the executive director is required to file an order with the secretary of state accepting the modification. The department is required to provide notice of intent to file such an order at least 60 days prior to the filing of the order.

The amendment to §65.175 would add the San Felipe gambusia to the list of threatened species and remove the Arctic peregrine falcon from the same list. The San Felipe gambusia is known to occur only in San Felipe Springs and San Felipe Creek in Val Verde County. Staff has determined that because of its

extremely limited range, extirpation is a certainty if the species ceases to occur in San Felipe Creek.

The Arctic peregrine falcon was declared recovered by the U.S. Fish and Wildlife Service (Service) in 1994 and was removed from the federal list of endangered species at that time. Federal rulemaking is currently underway that would allow states to authorize limited take of Arctic peregrines for falconry use. The amendment is necessary in order to allow their take by selected licensed falconers.

New §65.176, concerning Endangered Species, adopts the federal list of endangered species by rule. The intent of the department is to locate the federal list of endangered species and the state list of threatened within a single subchapter of the Texas Administrative Code in order to create single, comprehensive location for threatened and endangered species lists, which should make research, reference and citation more convenient.

New §65.177, concerning Violations and Penalties, relocates provisions previously contained in §65.176 which has been repealed and replaced with new §65.176, concerning Endangered Species.

The repeal of §65.176 will function to allow a new section to be designated as §65.176.

The amendment to §65.175 will function by adding the San Felipe gambusia to the list of threatened species and removing the Arctic peregrine falcon from the same list.

New §65.176 will function by incorporating by rule the list of species indigenous to Texas that are listed by the federal government as endangered.

New §65.177 will function by reiterating the penalties by statute for a violation of the rules.

The department received four comments opposing adoption of the proposed rules. Of the four comments, three provided a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response, follow.

One commenter opposed adoption and stated that the peregrine falcon is not listed as threatened or endangered by the federal government and should not be listed as threatened or endangered by the department. The department agrees with the commenter and responds that the rule as adopted removes the Arctic peregrine falcon from the list of threatened species; however, the department has determined that the American peregrine falcon *(Falco peregrinus anatum)* should remain on the list because the population of American peregrines in Texas is resident rather than migratory and its range and population in Texas is extremely limited. The department also notes that although the American peregrine falcon is not federally listed as either threatened or endangered, take is prohibited under federal law except under special use permit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal list of endangered species should not be adopted by rule because the federal government cannot be trusted not to overreach and because "Texas can always proactively decide to include and exclude" from the list. The department disagrees with the comment and responds that once the federal government lists a species as endangered, it is automatically protected by state law under Parks and Wildlife Code, Chapter 68. No changes were made as a result of the comment.

One commenter opposed adoption and stated that both *F.p anatum* and *F.p tundrius* have recovered to the extent that neither should be state-listed as endangered or threatened, and that Texas should be preparing for the harvest of passage tundra peregrines as authorized by the U.S. Fish and Wildlife Service. The department agrees that the federal government has delisted both the Arctic and the American peregrine falcon and that removal of the Arctic peregrine falcon from the state list of threatened species is warranted; however, the department disagrees that the American peregrine falcon should be delisted. The department has determined that the American peregrine falcon *(Falco peregrinus anatum)* should remain on the list because the population of American peregrines in Texas is resident rather than migratory and its range and population in Texas is extremely limited. The department also notes that although the American peregrine falcon is not federally listed as either threatened or endangered, take is prohibited under federal law except under special use permit. No changes were made as a result of the comment.

The department received 212 comments is support of adoption of the proposed rules.

No groups or associations commented in favor of or against adoption of the proposed rules.

31 TAC §§65.175 - 65.177

The amendment and new sections are adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species, and Chapter 68, which authorizes regulations necessary to administer the provisions of Chapter 68 and to attain its objectives, including regulations to govern the publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products and limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

§65.175. Threatened Species.

A threatened species is any species that the department has determined is likely to become endangered in the future. The following species are hereby designated as threatened species:
Figure: 31 TAC §65.175

§65.176. Endangered Species.

The following species are endangered species.
Figure: 31 TAC §65.176

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2009.

TRD-200901525
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: December 19, 2008
For further information, please call: (512) 389-4775

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31 TAC §65.176

The repeal is adopted under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Effective date: May 13, 2009
Proposal publication date: December 19, 2008
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SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §65.265

The Texas Parks and Wildlife Commission adopts an amendment to §65.265, concerning Permit Classes: Qualifications and Restrictions, without changes to the proposed text as published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10298).

The United States Fish and Wildlife Service (the Service) has authorized the issuance of a special-purpose permit to allow the possession and use of raptors by licensed falconers to abate depredation problems (50 CFR §21.27). Under an abatement permit, raptors may be used by permitted falconers to flush, haze, or take birds or other wildlife to mitigate depredation and nuisance problems, including threats to human health and safety. Under current rule, the number of raptors that may be possessed by a permitted falconer is specified according to the level of permit possessed by the falconer. The amendment adds new paragraph (6) to clarify that raptors possessed under an abatement permit do not count against the possession limits specified in the rule for each class of falconry permittee.

The amendment will function by allowing falconers to possess raptors in excess of recreational possession limits for abatement purposes.

The department received four comments opposing adoption to the proposed rule. All four commenters provided a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response, follow.

One commenter opposed adoption and stated that the department should not be adjusting possession limits for each permit class and that the department should instead be moving to change falconry regulations to be consistent with recent changes made to federal falconry rules.

The department disagrees with the comment in that the rule as adopted does not affect possession limits other than to specify that they do not apply to raptors held under a federal abatement permit. The department agrees that the falconry regulations should be changed to accommodate changes to the federal falconry rules and responds that it is currently in the process of developing those changes. No changes were made as a result to the comment.

One commenter opposed adoption and stated that the proposed rule does not "mirror the federal regulations at all." The commenter also stated that the rules should not allow wild-caught raptors to be used in abatement activities. The department disagrees that the rule as adopted does not mirror the federal regulations and responds that the intent of the rule is not to "mirror" the entirety of federal falconry regulations, but to allow falconers to possess raptors in excess of recreational possession limits for abatement purposes. The department also notes that federal law expressly prohibits the use of wild-caught raptors for abatement activities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current federal rules allow apprentices to qualify at age 12 and allow master falconers to possess up to five raptors. The department agrees with the comment, but responds that the rule as proposed was not intended to address anything but the possession of raptors for abatement purposes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a master falconer should be allowed to possess up to five raptors. The department agrees with the comment because recent changes to federal falconry rules allow master falconers to possess up to five raptors, but responds that the rule as proposed was not intended to address anything but the possession of raptors for abatement purposes. The department also notes that it is in the process of developing new falconry rules to accommodate recent changes to federal falconry rules. No changes were made as a result of the comment.

No groups or associations commented in favor of or against adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §49.014, which authorizes the department to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2009.

TRD-200901526
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 12, 2009
Proposal publication date: December 19, 2008
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 18. NURSING FACILITY ADMINISTRATORS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§18.2 - 18.4, 18.11 - 18.16, 18.31 - 18.41, and 18.51 - 18.57 in Chapter 18, Nursing Facility Administrators. The amendments to §§18.2, 18.13, 18.15, and 18.55 are adopted with changes to the proposed text published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8728). The amendments to §§18.3, 18.4, 18.11, 18.12, 18.14, 18.16, 18.31 - 18.41, 18.51 - 18.54, 18.56, and 18.57 are adopted without changes to the proposed text.

The amendments are adopted to update DADS rules governing nursing facility administrator (NFA) licensing, investigations, and sanctions. Licensing activities include validating initial and continuing education, providing quarterly seminars for administrator-in-training (AIT) preceptors, and taking licensure action, including issuance, renewal, denial, and revocation.

The amendments also incorporate the new fee schedule that was updated on March 1, 2006, by the National Association of Long Term Care Administrator Boards (NAB).

DADS received written comments from the Texas Healthcare Association (THCA), McLennan Community College, Midland Community College, the Texas Legal Services Center, and one individual. A summary of the comments and the responses follow.

Comment: Two commenters suggested the addition of the term "administrator of record" to §18.2 and requested clarification as to who is the administrator of record in a school-based program (the college, the program director, the school-designated preceptor or the administrator who supervises the Administrator-in-Training (AIT) in the building).

Response: The administrator of record is the person who is listed as the facility's licensed nursing facility administrator with DADS. In a non-academic setting, the preceptor and the administrator would be the same person. In a school-based program, the preceptor of the program assigns the AIT to a facility with a full-time administrator who will supervise the day-to-day activities of the AIT. In this instance, the preceptor and the administrator of record are not the same person. A definition has been added to §18.2 that states that "administrator of record" means an individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.

Comment: A commenter suggested either deleting the word "deliberate" from the proposed definition of misappropriation of resident property or keeping the language as it is currently stated in rule.

Response: The proposed change updates DADS rule language to be consistent with the definition used in federal regulation at 42 Code of Federal Regulations, §488.301. The rule was not changed in response to the comment.

Comment: Two commenters stated that the term "equivalent" in §18.2(11) is vague and requested further details as to who determines what is equivalent and how that determination is made.

Response: The proposed rule did not amend the definition of equivalent and did not substantively amend §18.11(a)(2). As stated in §18.2(11), "equivalent" is defined as "A level of achievement that is equal in amount and quality to completion of an educational or training program." DADS' licensing staff determines whether a course is "equivalent." DADS' staff may request a copy of the applicant's transcript and course description in order to make their decision. The rule was not changed in response to the comment.

Comment: Two comments were received regarding §18.3(c), relating to the membership of the Nursing Facility Administrators Advisory Committee (NFAAC), suggesting that an education position be added to the Committee, in an ex-officio capacity.

Response: The proposed rule did not substantively amend §18.3(c). The NFAAC is appointed by the governor. Texas Health and Safety Code, §242.303, Nursing Facility Administrators Advisory Committee, specifically details the composition of the committee. The rule was not changed in response to the comment.

Comment: A commenter stated, regarding §18.4, that embedding the fees into the actual regulations will require the NFAAC to go through the rule process to respond to future changes and suggested publishing them in a separate document via the DADS credentialing website and just referencing them in the rule.

Response: Texas Health and Safety Code, §242.304, states that the fees must be set in rule. The rule was not changed in response to the comment.

Comment: A commenter asked if the term "university" as used in §18.11 also includes all post-secondary institutions, whether two-year or four-year.

Response: The proposed rule did not substantively amend §18.11. The term "university" refers to a four-year, post-secondary institution. The rule was not changed in response to the comment.

Comment: A commenter asked who is responsible for ensuring that the degree-granting institution referred to in §18.11(a)(1) and (b) is appropriately accredited by the Texas Higher Education Coordinating Board (THECB) or the Association of Admissions and College Registrar Officers/Association of Collegiate Registrars Admissions Officers.

Response: The proposal did not substantively amend §18.11. DADS' licensing staff reviews this information and, if needed, works with a representative from THECB. The rule was not changed in response to the comment.

Comment: A commenter stated that there should be more awareness among nursing facility administrators in how to train their staff regarding the synchronization of services under the direction of the facility medical director and services under the direction of the hospice medical director. The commenter suggested adding language to §§18.11, 18.12, or 18.13, to require facility administrators to learn how to train their staff to synchronize facility services and hospice services.

Response: The domains of the NAB are used to test an administrator's knowledge and skills in all aspects of nursing facility administration, including resident care and quality of life. One of the tasks in this domain is to ensure that medical services are planned, implemented, and evaluated to meet resident medical care needs and preferences to maximize resident quality of life and quality of care. Chapter 18 refers to the licensure requirements of nursing facility administrators and does not include requirements relating to how an administrator trains the staff. Rules in Chapter 19 address a facility's responsibility to coordinate hospice services. The rule was not changed in response to the comment.

Comment: A commenter stated that the proposed rules do not list the domains of the NAB.

Response: The NAB domains are listed in §18.11(a)(2), which the proposed rules did not substantively amend. The rule was not changed in response to the comment.

Comment: A commenter asked how the determination is made in §18.11(a)(2) to allow for the equivalence of the 15 semester credit hours, and who makes this determination.

Response: The proposal did not substantively amend §18.11. DADS' licensing staff reviews this information and, if needed, works with a representative from THECB. The rule was not changed in response to the comment.

Comment: A commenter requested clarification on information in §18.11(a)(2) relating to the five current areas used by the NAB stating that the five domains were last changed in 1999 and may be changed again in the future. The commenter also noted that the current AIT Internship Training Manual (2004) does not follow the same taxonomy, but lists seven areas of learning, including specific requirements for training in "Ethics." The commenter stated that there is a need for consistency across all of these related documents with an eye to accommodate future modification.

Response: The proposed rule did not substantively amend §18.11. The subjects in the AIT Internship Training Manual are intended to cover all areas of nursing facility management and the seven areas listed in the manual cover each of the NAB domains. If the NAB officially changes its domains, the appropriate changes to Chapter 18 would be made to include any updated information. The rule was not changed in response to the comment.

Comment: A commenter stated, regarding §18.11, that the NAB domains do not specifically address the licensure and Medicaid requirements for Texas, yet one of the required tests is focused on this document. Since these items are the focus of the state exam, there should be competency requirements in the rules in the rules relating specifically to Texas Medicaid requirements.

Response: The proposal did not substantively amend §18.11. While the NAB domains do not address individual state licensure requirements, regulatory management is a part of the AIT training and includes such subjects as licensing standards; federal, state and city regulations; deficiencies; compliance; and Medicaid services. The rule was not changed in response to the comment.

Comment: A commenter asked, if the AIT is employed in the facility where the internship occurs, how many hours can be dedicated to the AIT and how many to employment activities?

Response: The AIT would follow the required procedures listed in §18.12 or §18.13, which would mean completing either 1,000 hours or 500 hours of the internship. An AIT can train no more than 40 hours a week. The rule was not changed in response to the comment.

Comment: A commenter requested clarification as to what parts, if any, of the prior notification requirements in §18.12 apply to college-based programs.

Response: The proposed rule did not substantively change this requirement. DADS' prior notification requirement forms do not apply to the college-based programs, as the information documented on the forms will be contained in the applicant's college transcripts, which are required with the submission of the Application for Nursing Facility Administrator License form. The rule was not changed in response to the comment.

Comment: A commenter stated that the proposed language in §18.12(6)(B) is redundant since the current AIT Final Report requires the preceptor's signature.

Response: In a non-academic setting, the preceptor is also the administrator of record. If the internship is done in an academic setting, the preceptor is not the administrator of record. This language is added as an additional verification that the AIT performed the internship at the facility. The rule was not changed in response to the comment.

Comment: Two commenters asked if the 500-hour internship requirements in §18.13(a)(1) - (2) will be subject to the same proportionality as the requirements in §18.12(4) relating to minimum amount of internship hours completed during traditional business hours.

Response: For consistency, §18.13(b) has been changed to state that a minimum of 250 hours of the 500-hour internship referred to in §18.13(a)(1) - (2) be done during traditional business hours.

Comment: A commenter asked how and by whom it will be validated that the alternate experiences identified in §18.13(a)(1) - (2) appropriately address the NAB domains.

Response: The proposed rule did not substantively change §18.13. DADS' licensing staff reviews this documentation and determine if the alternate education and experience meet the appropriate requirements. DADS' licensing staff may request a copy of the applicant's transcript and course description or further information regarding the management experience listed on the application in order to make the decision. The rule was not changed in response to the comment.

Comment: A commenter asked if the alternate education experiences in §18.13 are required to show an appropriate exposure to the Texas regulations and stated that advanced course work from out of state would almost certainly not address the licensure and Medicaid rules unique to Texas.

Response: To become an administrator, the applicant must pass both the NAB and the state exam. Advance coursework from out-of-state, if approved as a course of study, would probably not address the licensure and Medicaid rules unique to Texas. It is the responsibility of the applicant to be knowledgeable about the Texas regulations. The rule was not changed in response to the comment.

Comment: Concerning §18.13, a commenter asked how specific knowledge of funding sources related to long term care will be validated within the alternate learning experience.

Response: DADS evaluates alternative learning for inclusion of the five domains of the NAB. One of the domains is financial, which includes Medicare, Medicaid, and managed care. DADS expects a transcript and course descriptions to show the financial domain was included in coursework. DADS can request more information if the transcript or course description is not clear. In addition, the applicant must know the domains to pass the test.

Comment: A commenter asked, regarding §18.14, for clarification as to how the determination of "adequate training" will be made and if such information will be made available to the college-based internship programs for use in screening administrators who might serve as field supervisors.

Response: At the end of an internship, the AIT is required to complete a "Preceptor Performance Report" (Page 31 of the AIT Manual). On this report, the AIT determines if the AIT received "adequate training." The AIT is required to give a copy of the report to the preceptor and send the original to DADS. The college may obtain or request a copy of the report from the preceptor. The rule was not changed in response to the comment.

Comment: A commenter stated that the proposed language in §18.14(a)(4) incorporates statements from the AIT Internship manual into the regulations, thereby making the AIT Internship manual subject to the rule making process.

Response: Section 18.14(a)(4) states that the individual seeking to sponsor an AIT must meet the eligibility requirements in the State of Texas AIT Internship manual. The requirements relating to preceptor qualifications and responsibilities are listed for both non-academic and academic settings. This does not make the AIT manual subject to the rule making process. The rule was not changed in response to the comment.

Comment: Concerning §18.15(a)(5), a commenter asked how and who will validate that the transcript that is equivalent to the 15 semester credit hours in long-term care administration include the five domains of the NAB listed in §18.11 of the subchapter.

Response: The proposed rule did not substantively change §18.15(a)(5). DADS' licensing staff reviews this documentation and determines if the alternate education and experience meet the appropriate requirements. DADS' licensing staff may request a copy of the applicant's transcript and course description or further information about the management experience listed on the application in order to make the decision. The rule was not changed in response to the comment.

Comment: Concerning §18.16, a commenter asked if the state exam also references information in Chapter 18 and, if not, whether any of the rules that govern the licensure of the person as an administrator will be subject to assessment.

Response: The rules that govern the licensure of the person as an administrator are not necessarily part of the state examination questions. The Professional Credentialing Enforcement Unit of DADS will assess administrator compliance with the rules upon: (1) receipt of a complaint alleging violation of the rules by an administrator; or (2) referral by DADS' surveyors reporting suspected violation of rules or findings of substandard quality of care in a facility. The rule was not changed in response to the comment.

Comment: A commenter recommended expanding §18.34 to allow an administrator who exceeds 40 hours of continuing education units (CEUs) in the two-year licensing period to roll over no more than six hours of CEUs to the next licensing period. Ethics should be excluded from being rolled over.

Response: At this time, DADS' database cannot track carryover hours. However, the agency will consider this recommendation in the future. The rule was not changed in response to the comment.

Comment: A commenter suggested the creation of a new provisional license for nursing facility administrators in rural areas, whereupon a provisional license would be issued to candidates who hold a bachelors degree and are employed by a nursing facility located outside a Metropolitan Statistical Area. Within 18 months, the administrator under this rural provisional licensure rule should: (1) complete 15 semester credit hours on Long Term Care Administration that includes the course work that encompasses the five domains of the NAB; (2) complete a 1,000 hour preceptor supervision at the same facility, with the exception of facility closure. The preceptor would not be required to work full time at the nursing facility but would be required to work no fewer than 16 hours per month until the 1,000 hours are met; and (3) take and pass the NAB exam and the state licensure exam. The 18-month provisional license could not be renewed.

Response: DADS currently allows for a provisional license based on Texas Health and Safety Code, §242.309, independent of the location of a facility. Because Texas Health and Safety Code, §242.309, does not allow for the creation of a separate type of provisional license, the rule was not changed in response to the comment.

Comment: A comment recommended expanding the rules under §§18.31-18.41 to allow an administrator to be employed by two nursing facilities (not to exceed 120 beds total) that are within a 50-mile radius of each other.

Response: The current rules in Chapter 18 govern the licensure requirements of nursing facility administrators and do not include requirements relating to the duties of the administrator in a specific facility. An administrator's duties in a specific facility are addressed in Chapter 19. Texas Health and Safety Code, §242.015, requires an administrator to work at least 40 hours per week in the facility on administrative duties. This is also required in Chapter 19. While DADS does not specifically have a rule that states that an administrator cannot work in two facilities at the same time, given the 40 hour per week requirement, it would not be feasible for an administrator to work in two facilities at the same time. The rule was not changed in response to the comment.

Comment: Two commenters requested an explanation of why §18.35(a)(4)(C) limits the college credit courses for continuing education to "upper division" courses and suggested that the appropriateness of a college course should be determined by how well the content matches the domains of the NAB, rather than on the arbitrary academic level to which it is assigned. Another commenter suggested removing proposed language in §18.35(a)(4)(C) and replace it with "completes one three-semester hour course from an accredited institution of higher learning."

Response: The proposed rule did not substantively amend §18.35(a). DADS requires that the course taken or taught for continuing education purposes be an "upper division" course at a post-secondary institution of higher education accredited by an association recognized by the Texas Higher Education Coordinating Board. DADS waives, at a maximum, 20 of the 40 clock hours of continuing education to a licensee who completes one three-semester-hour upper-division course taken at a post-secondary institution of higher education. Because of this, DADS requires that the coursework be "upper division," which traditionally requires more extensive learning or knowledge of the subject. The rule was not changed in response to the comment.

Comment: The proposal in §18.35(b) to increase the self-study continuing education hours from six to 34 is very commendable as is the extension for military personnel in §18.35(f)(1).

Response: The agency acknowledges the comment.

Comment: A commenter expressed opposition to the proposed language in §§18.54, 18.55 and 18.57 that clarifies the imposition of a sanction is discretionary rather than mandatory.

Response: Texas Health and Safety Code §§242.313, 242.314 and 242.315 state that DADS may impose a sanction. The proposed language reflects the law that a sanction is discretionary rather than mandatory. The rule was not changed in response to the comment.

Comment: A commenter suggested adding language to §18.55(a)(17) to state that "A licensee must not allow or direct nursing facility employees, contractors, or others *to act or fail to act* in a manner that results in the harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility."

Response: The adoption adds language in §18.55(a)(17) to state "A licensee must not allow an employee's, a contractor's or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility".

Comment: A commenter requested clarification of the intent of §18.55(a)(27).

Response: The rule prohibits a licensee from offering or giving DADS staff a gift, loan, or other benefit that might influence or appear to influence the staff's performance of duties.

Comment: A commenter requested that proposed language from §18.57(c) be changed from "civil penalties *may* result from a referral to the Office of Attorney General" to "civil penalties *will* result from a referral to Attorney General."

Response: Texas Health and Safety Code, §242.319, relates to civil penalties and the referral to the Attorney General's Office. DADS' recourse in this situation is to make the referral to the Attorney General's Office. The attorney general would bring an action to recover a civil penalty. Since recovering a civil penalty depends upon the outcome of a lawsuit, DADS cannot say that the referral will definitively result in the civil penalty. The rule was not changed in response to the comment.

SUBCHAPTER A. GENERAL INFORMATION

40 TAC §§18.2 - 18.4

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§18.2. Definitions.

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

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.

(2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.

(3) Administrator--A licensed nursing facility administrator.

(4) Administrator-in-training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.

(5) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.

(6) Applicant--A person applying for a Texas nursing facility administrator license.

(7) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.

(8) Complaint--An allegation that a licensed nursing facility administrator violated one or more of the licensure rules or statutory requirements.

(9) DADS--The Department of Aging and Disability Services.

(10) Deficiency--Violation of a federal participation requirement in a nursing facility.

(11) Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(12) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(13) Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(14) Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(15) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(16) Internship--The 1,000-hour training period in a nursing facility for an AIT.

(17) License--A nursing facility administrator license or provisional license.

(18) Licensee--A person licensed by DADS as a nursing facility administrator.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(20) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(21) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state

licensure examination to be issued a license to practice nursing facility administration in Texas.

(22) NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(23) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.

(24) Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(25) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

(26) Nursing Facility Administrators Advisory Committee (NFAAC)--The nine-member governor-appointed advisory committee that makes recommendations to DADS about the practice and regulation of nursing facility administration.

(27) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(28) Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.

(29) PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(30) Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(31) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(32) Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(35) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.

(36) Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(37) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(38) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

TRD-200901538
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 438-3734

SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

40 TAC §§18.11 - 18.16

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§18.13. Alternate Education, Training, and Experience.

(a) Applicants not meeting the academic or internship requirements for licensure in §18.11 of this subchapter (relating to Academic Requirements) and §18.12 of this subchapter (relating to Internship Requirements), are eligible for licensure if they present evidence satisfactory to DADS of the following alternate education and experience:

(1) a master's degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with one year of management experience and completion of a 500-hour internship; or

(2) a baccalaureate degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with three years of management experience and completion of a 500-hour internship.

(b) A minimum of 250 hours of the 500-hour internship referred to in subsection (a) of this section must be done during traditional business hours.

(c) Management experience is defined as full-time employment as a department head or licensed professional supervising two or more employees in a nursing facility or skilled nursing hospital unit.

§18.15. Application Requirements.

(a) Applicants seeking licensure must submit the following to DADS:

(1) a complete and notarized Nursing Facility Administrator's Application for Licensure Form;

(2) $100 application fee;

(3) a Texas Department of Public Safety (DPS) Texas criminal conviction report and fingerprint card;

(4) an official transcript reflecting a baccalaureate degree from a university or health science center accredited by an association recognized by the Texas Higher Education Coordinating Board;

(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 15 semester credit hours in long term care administration or its equivalent that include the five domains of the NAB as listed in §18.11 of this subchapter (relating to Academic Requirements), or alternate education, training and experience listed in §18.13 of this subchapter (relating to Alternate Education, Training, and Experience); and

(6) proof of completing the minimum applicable internship that meets the internship requirements in §18.12 of this subchapter (relating to Internship Requirements).

(b) An application is valid for one year from the date the application fee is received.

(c) Applicants not meeting the requirements for licensure and examination within one year after DADS receives their application must resubmit the following to DADS:

(1) a notarized Nursing Facility Administrator's Application for Licensure form;

(2) $100 application fee; and

(3) a DPS Texas criminal conviction report and fingerprint card.

(d) DADS is not responsible for applications, forms, notices, and correspondence unless they are received by DADS.

(e) DADS is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported in writing to DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2009.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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SUBCHAPTER C. LICENSES

40 TAC §§18.31 - 18.41

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

40 TAC §§18.51 - 18.57

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§18.55. Violations of Standards of Conduct.

(a) DADS may impose a sanction listed in §18.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator Standards of Conduct:

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where employed the notice provided by DADS that gives the address and telephone number for reporting complaints against an administrator. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow nursing facility employees to harm nursing facility residents by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct employees to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another licensed nursing facility administrator of the Texas Health and Safety Code, Chapter 242, Subchapter I, or the agency's rules adopted under that subchapter and must report such violations to DADS.

(16) A licensee must not make or allow employees, contractors, or volunteers to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been rendered.

(19) A licensee must not make or file false reports or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the administrator's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions as prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere or impede an investigation by withholding or misrepresenting fact to DADS representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by DADS that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow employees or other individuals to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate employees of DADS, other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for DADS unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for DADS.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 47. CONTRACTING TO PROVIDE PRIMARY HOME CARE

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§47.1, 47.3, 47.11, 47.21, 47.23, 47.25, 47.41, 47.43, 47.45, 47.47, 47.49, 47.61, 47.65, 47.67, 47.69, 47.71, 47.73, 47.81, 47.83, 47.87, and 47.89; new §§47.57, 47.59, 47.72, 47.75, and 47.91; and the repeal of 47.5 in Chapter 47, Contracting to Provide Primary Home Care. The amendments to §§47.1, 47.3, 47.45, 47.47, 47.49, 47.61, 47.65, 47.67, 47.71, and 47.73, and new 47.57, are adopted with changes to the proposed text published in the October 24, 2008, issue of the

Texas Register (33 TexReg 8738). The amendments to §§47.11, 47.21, 47.23, 47.25, 47.41, 47.43, 47.69, 47.81, 47.83, 47.87, and 47.89; new §§47.59, 47.72, 47.75, and 47.91; and the repeal of §47.5 are adopted without changes to the proposed text.

Elsewhere in this issue, a proposed amendment to §47.63, the proposed repeal of §47.85, and proposed new §§47.101, 47.103, 47.105, 47.107, 47.109, 47.111, 47.113, 47.115, 47.117, and 47.119, which were published in the October 24, 2008, issue of the *Texas Register,* are withdrawn.

The amendments and new sections are adopted to improve controls for program access, service initiation, and service utilization in the Primary Home Care (PHC) Program. The rules also describe the process for expedited referrals and amend contracting requirements for providers with a contract assignment.

The new rules describe utilization review procedures required by the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, House Bill 1, 80th Legislature, Regular Session, 2007).

DADS received written comments from the Texas Association for Home Care (TAHC). A summary of the comments and the responses follow.

Comment: The commenter stated that it understands the change in language from the term "client" to "individual," but suggests that this change will necessitate a corresponding DADS licensure rule change to align the terms. In addition, PHC providers have used the term "client" in documentation ranging from policies to provider forms. DADS needs to ensure that PHC providers will not be penalized for using the term "client".

Response: The agency responds that providers will not be penalized for using the term "client." The rule was not changed in response to the comment.

Comment: Concerning §47.1, the commenter suggested that the rule should state that the chapter establishes the requirements for a provider contracting to provide "community-based" services, because services are provided at locations in addition to the individual's home.

Response: The agency agrees with the comment and has made the suggested change.

Comment: Concerning §47.3, the commenter requested a definition of "minimum number of days" as used in §47.45(a)(2)(C)(iii)(I) to clarify DADS' expectation regarding the service plan. The commenter also requested that the definition be very clear on what a minimum number of days means in relation to the development of the service plan between the provider and the client.

Response: The agency has deleted the phrase "minimum number of days" from §47.45; therefore, there is no need for a definition.

Comment: Concerning §47.3(31), the commenter requested that the definition of "service schedule" should be "A schedule for delivering attendant services containing the elements described in §47.45(a)(2)(C)(iii) of this chapter that is agreed upon and signed by the individual *and the provider."*

Response: The agency agrees to amend the definition of "service schedule" to "A schedule for delivering attendant services containing the elements described in §47.45(a)(2)(C)(iii) of this chapter." It is redundant to state in the definition that the service schedule must be signed by the individual and the provider because §47.45(a)(2) requires the individual and the provider to sign the service delivery plan.

Comment: Concerning §47.45(a)(2)(C)(iii)(I), the commenter stated that the paragraph does not allow for any flexibility in the development of the service plan, which the commenter stated is necessary to meet a client's needs. This may mean a service plan agreed upon by the client and the provider to ensure the client has a specific attendant or to accommodate changes in provider's ability to meet the client's needs. The commenter requested that the rule allow a client and provider to agree on the service plan even if it differs from the DADS' authorization, if the client's needs for health and safety are being met.

Response: The agency agrees that the requirement that the case manager determine a "minimum number of days" prevents flexibility in the service plan and has deleted the provision at §47.45(a)(2)(C)(iii)(I).

Comment: Concerning §47.45(b), the commenter recommended deleting the subsection and adding a requirement that any service delivery plan changes be documented using the same process as the ongoing service delivery plan change procedure outlined in §47.67, whether a change in task, increase in hours, or termination.

Response: The agency responds that §47.45(b) relates to changes in an initial service delivery plan and the process to follow if the service delivery plan agreed to between the provider and individual differs from the case manager's authorized hours or tasks, which is different from an on-going, temporary, or immediate service delivery plan change, addressed by §47.67. The rule language was not changed in response to the comment.

Comment: Concerning §47.45(a)(3)(B)(iii), which states that a provider must send the complete practitioner's statement to DADS within five business days of service initiation, the commenter requested the timeframe be changed to at least seven days. The current PHC rules allow 14 days.

Response: The agency agrees and has changed the required timeframe to seven working days. "Business days" has been changed to "working days" because that is the defined term in §47.3(34).

Comment: Concerning §47.45(a)(3)(B)(v), the commenter requested this section read, "the signature date or the date received by the agency must be on or before the negotiated start date."

Response: The agency disagrees with this comment and believes that a complete practitioner's statement must be signed and dated by the practitioner before services are provided. The rule language was changed, but only to clarify the reference is to the practitioner's signature and to use the term "start-of-care date" consistently.

Comment: Concerning §47.45(d)(1), which states that a provider may delay meeting the due dates only for reasons beyond its control such as natural or other disasters, the commenter noted that the provider must continue efforts to complete pre-initiation activities and set a date, if possible, for completion of pre-initiation activities. The commenter further stated that (1) there may be many reasons for delay that are beyond an agency's control that do not include natural or other disasters, so this language is unnecessary and should be removed; and (2) the section does not include any client-driven reasons for delay. The commenter suggested that the rule state in §47.45(d)(2) that the provider

must document "the reason for the delay, which must be beyond the agency's control."

Response: The agency agrees and has changed §47.45(d)(2) to require that the provider must document "the reason for the delay, which must be beyond the agency's control."

Comment: Concerning §47.47(a), which states that this section does not apply to family care services, the commenter recommended adding language to state that "or transfers of individuals in the PHC program" to clarify that the practitioner's statement is not needed when a client transfers from one provider to another. In addition, the commenter requested that language be added "or transfer from the Star+Plus program to PHC or CAS."

Response: The agency agrees to make the change concerning transfers of individuals in the PHC program. The agency will not add language related to the Star+Plus program, since Star+Plus does not require a practitioner's statement, which is a requirement in PHC.

Comment: Concerning §47.49, the commenter stated that it supports the difference in interdisciplinary timeframes based on the reason for the IDT, but wishes to stress the importance of having a representative from DADS for problem resolution.

Response: The agency appreciates the support and notes the commenter's concern. The rule was not changed in response to the comment.

Comment: Concerning §47.49(b)(3)(B), the commenter stated that this provision has led to DADS case managers instructing providers that they must retain a client that the agency has discharged for cause. The commenter stated that, if the client was dismissed for cause, this is not a justifiable action on the part of the case manager. The commenter requests that this provision be deleted or amended.

Response: The agency agrees that this provision is unnecessary and has deleted the provision.

Comment: Concerning §47.61, the commenter expressed support for the simplification in the notification process.

Response: The agency appreciates the support. The rule was not changed in response to the comment.

Comment: Concerning §47.61(c), which states that a provider may delay service initiation only for reasons beyond its control, such as natural or other disasters, that are not directly caused by the provider, the commenter stated that there may be many reasons beyond a provider's control that do not include natural or other disasters, and requests that the rule simply require that the reason for the delay be beyond the provider's control.

Response: The agency agrees and has changed §47.61(c) to require that the provider must document "the reason for the delay, which must be beyond the agency's control."

Comment: Concerning §47.65, the commenter requested that providers be allowed to use either the term "client" or "individual" on documentation, as HCSSA licensure terminology uses "client".

Response: The agency responds that providers will not be penalized for using the term "client." The rule language was not changed in response to the comment.

Comment: Concerning §47.65(d), the commenter stated that it does not address when there are two attendants present, and new attendant orientation is completed for one attendant and a supervisory visit is conducted for the other. In such a situation, the commenter stated that marking "not applicable" is inappropriate for the supervisory visit.

Response: The agency agrees and has deleted the last sentence of §47.65(d). This situation will be addressed in the contract monitoring tool instructions.

Comment: Concerning §47.67, the commenter requested that the section heading be changed to "Increase in Hours, Change in Task or Termination," because it would capture the service plan delivery changes outlined in the section, as well as the service plan delivery variances proposed in §47.45(b). The commenter stated that the suggested caption would clarify that a change in task, whether it requires an increase in hours or not, must be reported to the DADS Case Manager for a service authorization change.

Response: The agency responds that it believes the text of the rule is clear and changing the heading would not change the meaning of the section. The rule was not changed in response to comment.

Comment: Concerning §47.71, the commenter stated that, although the proposed language refers to a client permanently moving to an area where a provider does not contract to deliver services, the rule should address when a client temporarily leaves the provider's contracted service delivery area.

Response: The agency agrees with the comment and has made the suggested change.

Comment: Concerning §47.71(b), the commenter requested the rule allow a provider to suspend services if the individual fails to comply with the individual service plan or program requirements.

Response: The agency does not agree to make the change. The situation in which an individual fails to comply is addressed in the IDT process. The rule was not changed in response to the comment.

Comment: Concerning §47.71(c), the commenter requested adding language to read, "The provider agency must notify the case manager of any suspension by the next working day or the next working day after the date of awareness."

Response: The agency does not agree to make this change, but has changed the rule to clarify that the provider must notify the case manager the first working after the day a provider has suspended services.

Comment: Concerning §47.71, the commenter stated that the provider is not responsible for attempting to resolve a suspension under subsections (a)(7) or (b)(1) of this section, as that responsibility is DADS', as the administering Medicaid agency.

Response: The agency agrees with the comment and has changed the rule to require "a written explanation of the circumstances surrounding the suspension."

Comment: Concerning §47.71(e), the commenter recommended stating that the subsection does not apply to (a)(7) or (b)(1) of this section.

Response: The agency agrees and has added language to §47.71(e) to state that "This subsection does not apply to (a)(7) or (b)(1) of this section."

In addition, five minor editorial changes were made to the text of §§47.3, 47.45, 47.57, and 47.67 to clarify and improve the accuracy of the sections.

SUBCHAPTER A. INTRODUCTION

40 TAC §47.1, §47.3

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§47.1. Purpose.

(a) This chapter establishes the requirements for a provider contracting to provide community-based services to an individual through the DADS PHC Program. PHC Program services may be provided through a home and community support services agency, the service responsibility option (SRO), or the consumer directed services (CDS) option of service delivery. The SRO is described in Chapter 43 of this title (relating to Service Responsibility Option) and the CDS option is described in Chapter 41 of this title (relating to Consumer Directed Services Option).

(b) The requirements in this chapter apply to PHC services, FC services, and CAS, unless otherwise specified in the text.

§47.3. Definitions.

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

(1) ADL--Activity of daily living. An activity that is essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transferring, and ambulation. An ADL does not include a service that must be provided or supervised by licensed personnel.

(2) Attendant--A person who provides authorized tasks to an individual.

(3) CAS--Community attendant services. A service under the PHC Program providing in-home attendant services to individuals with an approved medical need for assistance with personal care tasks. CAS (formerly known as §1929(b) or frail elderly) are provided under Title XIX of the federal Social Security Act (relating to Grants to States for Medical Assistance Programs) at 42 U.S.C. §1396t (relating to Home and Community Care for Functionally Disabled Elderly Individuals).

(4) Case manager--A DADS employee who is responsible for case management activities. Activities include eligibility determination, individual registration, assessment and reassessment of an individual's needs, service delivery plan development, and intercession on the individual's behalf.

(5) Contract--The formal, written agreement between DADS and a provider to provide PHC Program services to an individual eligible under this chapter in exchange for reimbursement.

(6) Contract manager--A DADS employee who is responsible for the overall management of the contract with the provider.

(7) Days--Any reference to days means calendar days, unless otherwise specified in the text. Calendar days include weekends and holidays.

(8) DADS--The Department of Aging and Disability Services.

(9) Expedited referral--An oral request from a case manager to a provider when the case manager determines that an individual's needs require that pre-initiation activities be completed in less than 14 days. The completion date is negotiated between the case manager and provider.

(10) Facsimile notice--written information sent to a designated number via facsimile.

(11) FC services--Family Care services. A service under the PHC Program providing in-home attendant services to eligible adults. FC services are provided under Title XX of the federal Social Security Act (relating to Block Grants to States for Social Services) at 42 U.S.C. §1397 et seq.

(12) Functional limitation--An individual's requirement for assistance with one or more ADLs caused by a physical limitation or disability.

(13) Imminent danger--An immediate, real threat to a person's safety.

(14) Individual--A person who is enrolled in the PHC Program and, unless the context indicates otherwise, the person's representative.

(15) Medical need--A medical diagnosis that results in a functional limitation.

(16) Non-priority--The eligibility status for service delivery as determined by the case manager for an individual who does not meet the criteria described in §48.2918(d) of this title (relating to Primary Home Care or Community Attendant Services). Services delivered to such an individual may be referred to as non-priority services, and an attendant who serves such an individual may be referred to as a non-priority attendant.

(17) Notice--Includes oral, facsimile, secure e-mail and written notice.

(18) Oral notice--Directly speaking with a person. Oral notice does not include a message left by voice mail.

(19) PHC Program--Primary Home Care Program. A DADS attendant care services program. CAS, PHC, and FC are the three types of services available under the PHC Program.

(20) PHC services--A service under the PHC Program providing in-home attendant services to an individual with an approved medical need for assistance with personal care tasks. PHC services are provided under Title XIX of the federal Social Security Act, at 42 U.S.C. §1396a (relating to State plans for medical assistance).

(21) Practitioner--A person who holds a doctor of medicine or doctor of osteopathy degree and is currently licensed in Texas, Louisiana, Arkansas, Oklahoma or New Mexico; a physician assistant currently licensed in Texas; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(22) Practitioner's statement--DADS' Practitioner's Statement of Medical Need form.

(23) Priority--The eligibility status for service delivery as determined by the case manager for an individual who meets the criteria described in §48.2918(d) of this title. Services delivered to such an

individual may be referred to as priority services, and an attendant who serves such an individual may be referred to as a priority attendant.

(24) Provider--A licensed home and community support services agency that has a contract.

(25) Reckless behavior--Acting with conscious indifference to the consequences.

(26) Regional nurse--A DADS employee who is responsible for authorizing an individual to receive CAS.

(27) Representative--An individual's spouse, other responsible party, designated representative, or legally authorized representative.

(28) Routine referral--A written request from the case manager to a provider to evaluate an individual for service delivery when the case manager determines that the individual's needs do not require an expedited referral.

(29) Secure e-mail notice--Written information sent via electronic mail using sufficient precautions to protect the privacy and security of identifying information in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

(30) Service delivery plan--A single document that is agreed upon and signed by an individual and a provider containing the elements described in §47.45(a)(2) of this chapter (relating to Pre-Initiation Activities). A single document may be more than one page.

(31) Service schedule--A schedule for delivering attendant services containing the elements described in §47.45(a)(2)(C)(iii) of this chapter.

(32) Signature--A person's name written in longhand or a mark representing his or her name on a document to certify it is correct. Initials are not an acceptable substitute for a signature if the person has the ability to write in longhand.

(33) Supervisor--A provider employee who:

(A) coordinates the delivery of services in an individual's service delivery plan;

(B) supervises attendants; and

(C) meets the requirements for a supervisor in accordance with §97.404 of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services).

(34) Working day--Any day except a Saturday, Sunday, or state holiday.

(35) Written--Information recorded on paper or other legible document.

(36) Written notice--Written information sent via mail, facsimile, secured email, or hand delivered.

(37) Utilization review--A planned, systematic review of service utilization to evaluate efficiency, quality, and appropriateness of services and service delivery plans. Utilization review may include routinely scheduled review of services or providers, or may be focused on an identified issue.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §47.5

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §47.11

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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SUBCHAPTER C. STAFF REQUIREMENTS

40 TAC §§47.21, 47.23, 47.25

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SUBCHAPTER D. SERVICE DELIVERY PLAN DEVELOPMENT

40 TAC §§47.41, 47.43, 47.45, 47.47, 47.49

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§47.45. Pre-Initiation Activities.

(a) Pre-initiation activities. A supervisor must complete the following activities for each referral.

(1) The supervisor must conduct an evaluation.

(A) The evaluation must be a single document that includes the individual's self-report of:

(i) the dates and reasons for any hospitalization within the last three months; and

(ii) the assistance needed for the individual to perform ADLs, including any assistive devices or medical equipment used by the person.

(B) If the provider determines during the evaluation that the individual exhibits reckless behavior that results in imminent danger to the health and safety of the individual or provider staff, the provider must convene an Interdisciplinary Team meeting as described in §47.49 of this chapter (relating to Interdisciplinary Team) to discuss the barriers to service delivery.

(2) The supervisor must develop a service delivery plan on a single document that:

(A) is agreed upon and signed by the individual and the provider;

(B) indicates the location of service delivery;

(C) records the following:

(i) the tasks which the individual is authorized to receive;

(ii) the total weekly hours of service DADS authorizes the individual to receive;

(iii) the service schedule, which must include as necessary, based on an individual's needs, certain time periods for the delivery of specified tasks;

(iv) frequency of supervisory visits; and

(v) a statement that:

(I) the PHC Program only provides the tasks allowable in the program as described in §47.41 of this chapter (relating to Allowable Tasks) and agreed to on the service delivery plan; and

(II) the provider is not responsible for meeting the applicant's needs other than tasks allowed under the PHC Program.

(3) The provider must obtain a complete practitioner's statement and submit for DADS' review as described in §47.47 of this chapter (relating to Medical Need Determination). This paragraph does not apply to FC services.

(A) For routine referrals, the provider must:

(i) send a copy of the practitioner's statement to DADS by facsimile or secured email; or

(ii) mail a copy of the practitioner's statement to DADS.

(B) For expedited referrals:

(i) DADS may send the authorization for community services form pending receipt of the practitioner's statement if the provider notifies DADS that the provider has received a complete practitioner's statement that documents the individual's medical condition is the cause of the individual's functional impairment.

(ii) Upon notification of a completed practitioner's statement, DADS and the provider will negotiate a start-of-care date.

(iii) The provider must send the complete practitioner's statement to DADS within 7 working days after service initiation.

(iv) If a complete practitioner's statement is not sent to DADS within 7 working days after service initiation the provider is not entitled to payment from DADS until the date DADS receives the completed practitioner's statement. In this circumstance, DADS will change the service initiation date to the date DADS receives the completed practitioner's statement.

(v) The signature date of the practitioner must be on or before the negotiated start-of-care date.

(b) Service delivery plan variances.

(1) The provider must notify the case manager of a variance in the service delivery plan when the initial service delivery plan developed by the provider:

(A) has more hours than authorized on DADS' authorization for community care services form;

(B) has no personal care services, except for FC services; or

(C) is temporarily changed as described in paragraph (3) of this subsection.

(2) The provider must provide services according to the existing service delivery plan, until the provider receives a new DADS' authorization for community care services form, except the provider may temporarily change the service delivery plan if:

(A) the individual requests and requires temporary assistance with allowable tasks not identified on the service delivery plan due to a change in circumstances or available supports; and

(B) the change in tasks does not increase the total approved hours of service or continue for more than 60 days.

(3) The provider must request and obtain a new DADS authorization for community services form when a temporary variance in tasks on the service delivery plan is to continue for more than 60 days or would result in more hours of service provided than have been approved.

(4) The provider must request a new DADS authorization for community care services form before a temporary variance from the service delivery plan continues for more than 60 days.

(5) The provider must maintain the following documentation regarding the temporary service delivery plan variance in the individual's file:

(A) the specific variance in the service delivery plan;

(B) the duration of the temporary variance; and

(C) the reason for the temporary variance as described in paragraph (3) of this subsection.

(c) Pre-initiation activities due date. The provider must complete the pre-initiation activities as follows:

(1) for routine referrals, within 14 days after one of the following dates, whichever is later:

(A) the referral date on DADS' authorization for community care services form; or

(B) the date the provider receives DADS' authorization for community care services form, unless the provider fails to stamp the receipt date on the form, in which case the referral date will be used to determine timeliness; and

(2) for expedited referrals, by the date negotiated between the case manager and provider, which must be less than 14 days after the oral request.

(d) Delay in pre-initiation activities.

(1) A provider may delay meeting the due dates in subsection (c) of this section only for reasons beyond its control such as natural or other disasters. The provider must continue efforts to complete pre-initiation activities and set a date, if possible, for completion of pre-initiation activities.

(2) The provider must document any failure to complete the pre-initiation activities for routine referrals by the due date, including:

(A) the reason for the delay, which must be beyond the provider's control;

(B) either the date the provider anticipates it will complete the pre-initiation activities or specific reasons why the provider cannot anticipate a completion date; and

(C) a description of the provider's ongoing efforts to complete pre-initiation activities.

(3) The provider must notify the case manager of any failure to complete the pre-initiation activities for expedited referrals before the negotiated date for completion of pre-initiation activities. The case manager may refer the individual to another provider.

(e) Documentation of pre-initiation activities.

(1) The provider may combine the evaluation and service delivery plan into a single document, but each item must be clearly identifiable.

(2) The provider must maintain documentation of the pre-initiation activities in the individual's file.

§47.47. Medical Need Determination.

(a) Applicability. This section does not apply to FC services or transfers of individuals in the PHC Program.

(b) Determining medical need. A provider must obtain and submit a complete practitioner's statement to DADS for review by the applicable due date, as described in §47.45(c) of this chapter, (relating to Pre-Initiation Activities) for:

(1) an individual whom DADS refers to the provider (unless the individual requests and is to receive FC services);

(2) an individual currently receiving FC services whom DADS refers to the provider for PHC services or CAS; and

(3) an individual currently receiving services whom DADS refers to the provider to have medical need reassessed, as requested by the case manager, such as when the initial medical need was established for a limited time.

(c) Submitting a practitioner's statement. A provider must submit a complete practitioner's statement to:

(1) the DADS case manager for PHC services; and

(2) the DADS regional nurse for CAS.

(d) Reinstatement of services after termination. If DADS notifies the provider that services are terminated, all pre-initiation activities, including medical need determination, must be completed before services are reinstated.

(e) Mental illness and mental retardation. Persons diagnosed with mental illness, mental retardation, or both, are not considered to

have established medical need based solely on such diagnoses, but may establish medical need through a related diagnosis that results in a functional limitation.

§47.49. Interdisciplinary Team.

(a) Interdisciplinary Team (IDT). The IDT is a designated group that includes the following people who meet when the provider identifies the need to discuss service delivery issues or barriers to service delivery:

(1) the individual or the individual's representative, or both;

(2) a provider representative; and

(3) a DADS representative, who may be:

(A) the case manager (or designee);

(B) the case manager's supervisor (or designee);

(C) the contract manager (or designee); or

(D) the regional nurse (or designee).

(b) Convening an IDT meeting.

(1) The provider must convene an IDT meeting:

(A) within three working days of the date the provider suspends services to an individual under §47.71(a)(7) or (b) of this chapter (relating to Suspensions); or

(B) within seven working days of the date the provider identifies an issue that prevents the provider from carrying out a requirement of the PHC Program.

(2) A provider must make and document a good faith effort to include all members of the IDT described in subsection (a) of this section.

(3) If the provider is unable to convene an IDT meeting with all the members described in subsection (a) of this section, the provider must convene the IDT meeting with the available members and send the documentation of the IDT meeting described in subsection (e) of this section to the Regional Director for the DADS region in which the individual resides. The documentation must be sent within five working days after the date of the IDT meeting.

(c) IDT meeting.

(1) The IDT meeting may be conducted by telephone or in person.

(2) The IDT must:

(A) evaluate the issue;

(B) identify any solutions to resolve the issue; and

(C) make recommendations to the provider.

(d) IDT meeting outcome. The provider must do one of the following within two working days after the IDT meeting:

(1) implement the recommendations of the IDT; or

(2) discharge the individual from the provider and refer the individual to the case manager for referral to another provider.

(e) Documentation of the IDT meeting. The provider must document the IDT meeting in the individual's file, including the:

(1) specific reasons for calling the IDT meeting;

(2) participants in the IDT meeting;

(3) recommendations of the IDT;

(4) action as a result of the IDT recommendations; and

(5) reasons for the provider's actions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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SUBCHAPTER E. SERVICE REQUIREMENTS

40 TAC §§47.57, 47.59, 47.61, 47.65, 47.67, 47.69, 47.71 - 47.73, 47.75

The new rules and amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§47.57. Service Delivery Options.

An individual receiving PHC Program services has a choice of one of the following three service delivery options.

(1) Agency option. In the agency option:

(A) the provider is responsible for personnel decisions, such as selecting, supervising, and dismissing the attendant who provides services to the individual, with input from the individual;

(B) the provider is responsible for:

(i) recruitment of attendants and substitute attendants (a responsibility the individual may share);

(ii) payroll for attendants and substitute attendants; and

(iii) filing tax-related reports of attendants and substitute attendants;

(C) the provider is the employer of record of attendants and substitute attendants; and

(D) the provider is responsible for providing substitute attendants.

(2) Consumer directed services (CDS) option. In the CDS option, as described in Chapter 41 of this title (relating to Consumer Directed Services Option):

(A) the individual recruits, hires, manages, and fires attendants;

(B) the individual is the employer of record of his or her attendant and substitute attendant;

(C) the individual is responsible for providing substitute attendants; and

(D) the consumer directed services agency (CDSA) is responsible for financial management services, including:

(i) registering as the individual's employer-agent with the Internal Revenue Service and the Texas Workforce Commission;

(ii) managing payroll for attendants and substitute attendants, including filing tax-related reports;

(iii) tracking expenditures; and

(iv) submitting quarterly expenditure reports to the employer and case manager; and

(E) the CDSA is not required to be licensed under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) when performing the functions described in subparagraph (D) of this paragraph.

(3) Service responsibility option (SRO). In the SRO, as described in Chapter 43 of this title (relating to Service Responsibility Option):

(A) the individual selects, manages, supervises, and dismisses attendants;

(B) the provider is the employer of record for the attendant and substitute attendant;

(C) the provider is responsible for:

(i) providing substitute attendants if necessary;

(ii) managing payroll for attendants and substitute attendants; and

(iii) filing tax-related reports of attendants and substitute attendants;

(D) the individual and supervisor must negotiate the frequency of supervisory visits;

(E) the individual is responsible for the new attendant orientation; and

(F) the provider is required to be licensed under Chapter 97 of this title if performing the functions described in subparagraph (C) of this paragraph.

§47.61. Service Initiation.

(a) Service initiation. The provider must initiate services:

(1) for routine referrals described in §47.43 of this chapter (relating to Referrals):

(A) for FC services, within 14 days after the following, whichever is later:

(i) the referral date on DADS' authorization for community care services form; or

(ii) the date the provider receives DADS' authorization for community care services form, unless the provider fails to stamp the receipt date on the form, in which case the referral date is used to determine timeliness; or

(B) for PHC and CAS, within seven days after provider receipt of DADS' authorization for community care services form; and

(2) for expedited referrals described in §47.43 of this chapter, on the date negotiated between the case manager and provider.

(b) Notification of service initiation. Within 14 days after initiating services, the provider must send notice of service initiation to the case manager.

(c) Delay in service initiation. A provider may delay service initiation only for reasons not directly caused by the provider, or reasons beyond its control, such as natural or other disasters. The provider must continue efforts to initiate services and set a date, if possible, for service initiation. The provider must document any failure to initiate services by the applicable due date in subsection (a) of this section, including:

(1) the reason for the delay, which must be beyond the provider's control;

(2) either the date the provider anticipates it will initiate services, or specific reasons why the provider cannot anticipate a service initiation date; and

(3) a description of the provider's ongoing efforts to initiate services.

(d) Documentation of service initiation. The provider must maintain documentation of service initiation in the individual's file.

§47.65. Supervisory Visits.

(a) Supervisory visits. A supervisor must conduct in-person supervisory visits to assess and document on a single form whether:

(1) the service delivery plan is adequate;

(2) the individual continues to need the services;

(3) the individual needs a service delivery plan change;

(4) the attendant continues to be competent to provide the authorized tasks; and

(5) the attendant is delivering the authorized tasks.

(b) Frequency. A supervisor must establish the frequency of in-person supervisory visits, based on the specific needs of the individual, the attendant, or both. The frequency of in-person supervisory visits must be at least annually.

(c) Documentation of supervisory visits. The provider must maintain documentation of each supervisory visit in the individual's file.

(d) Combining a supervisory visit and a new attendant orientation. A supervisor may conduct a scheduled supervisory visit and a new attendant orientation at the same time.

§47.67. Service Delivery Plan Changes.

(a) Increase in hours or terminations.

(1) A provider must submit written notification to the case manager within seven days after learning of any change that may:

(A) require an increase in hours in the individual's service delivery plan; or

(B) result in the termination of services due to the individual receiving no personal care tasks, except for FC services.

(2) The notification must include the:

(A) date the provider learned of the need for the change;

(B) reason for the change;

(C) type of change (including the number of hours of service); and

(D) signature and date of the provider representative.

(b) Decrease in hours. The provider must develop a new service delivery plan, as described in §47.45(a)(2) of this chapter (relating to Pre-Initiation Activities), within 21 days of the provider identifying the need for an ongoing decrease in hours from the service delivery plan currently approved by the individual.

(c) Immediate increase in hours of service.

(1) The provider must notify the case manager, or designee, of the reason an individual requires an immediate increase in hours of service, and must obtain approval from DADS of both the number of additional hours of service to be provided the individual and the effective date of the change.

(2) The provider must implement the immediate increase in hours of service on the negotiated effective date of the change.

(3) The provider must document the immediate increase in hours of service. Documentation must include:

(A) the date the provider received approval for the change;

(B) the name of the DADS staff who approved the change;

(C) the effective date of the change; and

(D) the number of hours of service authorized.

(4) The provider must maintain documentation of service delivery plan changes:

(A) in the individual's file; and

(B) according to the terms of the contract.

(d) Implementation of service delivery plan changes. The provider must implement the service delivery plan change on the following date, whichever is later:

(1) the authorization begin date on DADS' authorization for community care services form; or

(2) five days after the date the provider receives DADS' authorization for community care services form, unless the provider fails to stamp the receipt date on the form, in which case the authorization begin date on the form will be used to determine timeliness.

(e) Delay in implementation of service delivery plan changes. If a provider does not implement a service delivery plan change on the effective date of the change, the provider must set a new implementation date. The provider must document by the next working day any failure to implement a service delivery plan change on the effective date of the change. The documentation must include:

(1) the reason for the failure to timely implement the service delivery plan change; and

(2) the new implementation date.

§47.71. Suspensions.

(a) Required suspensions. A provider must suspend services if:

(1) an individual temporarily or permanently leaves the contracted service delivery area;

(2) the individual moves to a location where services cannot be provided under the PHC Program;

(3) the individual dies;

(4) the individual is admitted to an institution, which is a:

(A) hospital;

(B) nursing facility;

(C) state school;

(D) state hospital;

(E) intermediate care facility serving persons with mental retardation or a related condition; or

(F) correctional facility.

(5) the individual requests that services end;

(6) the Health and Human Services Commission denies the individual's Medicaid eligibility (not applicable to FC services); or

(7) the individual or someone in the individual's home exhibits reckless behavior, which may result in imminent danger to the health and safety of the individual, the attendant, or another person, in which case the provider must make an immediate referral to:

(A) the Texas Department of Family and Protective Services or other appropriate protective services agency;

(B) local law enforcement, if appropriate; and

(C) the individual's case manager.

(b) Optional suspensions. The provider may suspend services if:

(1) the individual or someone in the individual's home engages in discrimination against a provider or DADS employee in violation of applicable law; or

(2) the individual refuses services for more than 30 consecutive days.

(c) Notification of service suspension. The provider must notify the case manager of any suspension by the first working day after the provider suspends services. The notice must include:

(1) the date of service suspension;

(2) the reason(s) for the suspension;

(3) the duration of the suspension, if known; and

(4) for a suspension under subsections (a)(7) or (b) of this section, a written explanation of the circumstances surrounding the suspension.

(d) Interdisciplinary Team (IDT) meeting. The provider must convene an IDT meeting, as described in §47.49 of this chapter (relating to Interdisciplinary Team), if services are suspended under subsections (a)(7) or (b) of this section.

(e) Resuming services after suspension. This subsection does not apply to subsections (a)(7) or (b)(1) of this section.

(1) A provider must resume services after suspension on the earliest of the following:

(A) upon the individual's return home, or the date the provider becomes aware of the individual's return home, if applicable;

(B) on the date specified in writing by the case manager;

(C) as a result of a recommendation by the IDT; or

(D) upon the provider's receipt of notification from the case manager that the provider must resume services pending the outcome of an appeal.

(2) The provider must notify the case manager of the date services resume within seven days after that date.

§47.73. Annual Reauthorization for Community Attendant Services (CAS).

(a) Reauthorization request.

(1) Upon receipt of the annual DADS authorization for community care services form, a provider must request annual reauthorization for all CAS.

(2) The provider must send the following to the regional nurse to obtain annual reauthorization:

(A) DADS' authorization for community care services form received from the case manager; and

(B) a signed statement indicating whether the supervisor agrees or disagrees with the tasks and hours indicated on DADS' authorization for community care services form, and if the supervisor disagrees, the statement must provide the specific reasons for disagreeing with the hours and tasks on this form.

(b) Reauthorization request due date. The provider must submit the information described in subsection (a)(2) of this section to the regional nurse within 14 days after one of the following dates, whichever is later:

(1) the referral date on DADS' authorization for community care services form; or

(2) the date the provider receives DADS' authorization for community care services form, unless the provider fails to stamp the receipt date on the form, in which case the referral date will be used to determine timeliness.

(c) Authorization determination. DADS makes the authorization determination and notifies the provider before the annual reauthorization is due.

(d) Documentation of annual reauthorization. The provider must maintain documentation of the written request for reauthorization for CAS in the individual's file.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of Aging and Disability Services
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SUBCHAPTER F. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§47.81, 47.83, 47.87, 47.89

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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SUBCHAPTER G. UTILIZATION REVIEW

40 TAC §47.91

The new rule is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §34.23(1)

$V = a \div e \div t + f$

V = value of a ticket

a = amount of the expenditure made by a person for the right to use a suite

e = number of events to which a person has the right to use the suite

t = number of suite tickets a person has the right to purchase or use per event

f = the face value of the ticket, if the ticket was not included in the suite price

Figure: 1 TAC §34.25(1)

$V = a \div e - t \div g$

V = value of a suite

a = amount of the expenditure made by a person for the right to use a suite

e = number of events to which the person has the right to use the suite

t = less the value of any tickets included in the cost of the suite per event

g = number of guests in attendance

Figure: 31 TAC §65.175

State-Listed Threatened Species in Texas

MAMMALS
Margay *(Leopardus (=Felis) wiedii)*
Louisiana Black Bear *(Ursus americanus luteolus)*
Black Bear *(Ursus americanus)*
White-nosed Coati *(Nasua narica)*
Southern Yellow Bat *(Lasiurus ega)*
Spotted bat *(Euderma maculatum)*
Rafinesque's Big-eared Bat *(Corynorhinus rafinesquii)*
Texas Kangaroo Rat *(Dipodomys elator)*
Coues' Rice Rat *(Oryzomys couesi)*
Palo Duro Mouse *(Peromyscus truei comanche)*
Gervais' Beaked Whale *(Mesoplodon europaeus)*
Goose-beaked Whale *(Ziphius cavirostris)*
Pygmy Sperm Whale *(Kogia breviceps)*
Dwarf Sperm Whale *(Kogia simus)*
Killer Whale *(Orcinus orca)*
False Killer Whale *(Pseudorca crassidens)*
Short-finned Pilot Whale *(Globicephala macrorhynchus)*
Pygmy Killer Whale *(Feresa attenuata)*
Atlantic Spotted Dolphin *(Stenella frontalis)*
Rough-toothed Dolphin *(Steno bredanensis)*

BIRDS
Bald Eagle *(Haliaeetus leucocephalus)*
Common Black-hawk *(Buteogallus anthracinus)*
Gray Hawk *(Asturina nitidus)*
White-tailed Hawk *(Buteo albicaudatus)*
Zone-tailed Hawk *(Buteo albonotatus)*
Peregrine Falcon *(Falco peregrinus anatum)*
Cactus Ferruginous Pygmy-owl *(Glaucidium brasilianum cactorum)*
Mexican Spotted Owl *(Strix occidentalis lucida)*
Piping Plover *(Charadrius melodus)*
Reddish Egret *(Egretta rufescens)*
White-faced Ibis *(Plegadis chihi)*
Wood Stork *(Mycteria americana)*
Swallow-tailed Kite *(Elanoides forficatus)*
Sooty Tern *(Sterna fuscata)*
Northern Beardless-tyrannulet *(Camptostoma imberbe)*
Rose-throated Becard *(Pachyramphus aglaiae)*
Tropical Parula *(Parula pitiayumi)*
Bachman's Sparrow *(Aimophila aestivalis)*
Texas Botteri's Sparrow *(Aimophila botterii texana)*
Arizona Botteri's Sparrow *(Aimophila botterii arizonae)*

REPTILES
Green Sea Turtle *(Chelonia mydas)*
Loggerhead Sea Turtle *(Caretta caretta)*
Alligator Snapping Turtle *(Macrochelys temminckii)*
Cagle's Map Turtle *(Graptemys caglei)*
Chihuahuan Mud Turtle *(Kinosternon hirtipes murrayi)*

Texas Tortoise *(Gopherus berlandieri)*
Reticulated Gecko *(Coleonyx reticulatus)*
Reticulate Collared Lizard *(Crotaphytus reticulatus)*
Texas Horned Lizard *(Phrynosoma cornutum)*
Mountain Short-horned Lizard *(Phrynosoma hernandesi)*
Scarlet Snake *(Cemophora coccinea)*
Black-striped Snake *(Coniophanes imperialis)*
Indigo Snake *(Drymarchon corais)*
Speckled Racer *(Drymobius margaritiferus)*
Northern Cat-eyed Snake *(Leptodeira septentrionalis)*
Louisiana Pine Snake *(Pituophis ruthveni)*
Brazos Water Snake *(Nerodia harteri)*
Smooth Green Snake *(Liochlorophis vernalis)*
Trans-Pecos Black-headed Snake *(Tantilla cucullata)*
Chihuahuan Desert Lyre Snake *(Trimorphodon vilkinsonii)*
Timber (Canebrake) Rattlesnake *(Crotalus horridus)*

AMPHIBIANS
San Marcos Salamander *(Eurycea nana)*
Cascade Caverns Salamander *(Eurycea latitans)*
Comal Blind Salamander *(Eurycea tridentifera)*
Blanco Blind Salamander *(Eurycea robusta)*
Black-spotted Newt *(Notophthalmus meridionalis)*
South Texas Siren (large form) (*Siren* sp.1*)*
Mexican Tree Frog *(Smilisca baudinii)*
White-lipped Frog *(Leptodactylus fragilis)*
Sheep Frog *(Hypopachus variolosus)*
Mexican Burrowing Toad *(Rhinophrynus dorsalis)*

FISHES
Shovelnose Sturgeon *(Scaphirhynchus platorynchus)*
Paddlefish *(Polyodon spathula)*
Mexican Stoneroller *(Campostoma ornatum)*
Rio Grande Chub *(Gila pandora)*
Blue Sucker *(Cycleptus elongatus)*
Creek Chubsucker *(Erimyzon oblongus)*
Toothless Blindcat *(Trogloglanis pattersoni)*
Widemouth Blindcat *(Satan eurystomus)*
Conchos Pupfish *(Cyprinodon eximius)*
Pecos Pupfish *(Cyprinodon pecosensis)*
Rio Grande Darter *(Etheostoma grahami)*
Blackside Darter *(Percina maculata)*
Opossum Pipefish *(Microphis brachyurus)*
River Goby *(Awaous banana)*
Mexican Goby *(Ctenogobius claytonii)*
San Felipe Gambusia *(Gambusia clarkhubbsi)*
Blotched Gambusia *(Gambusia senilis)*
Devils River Minnow *(Dionda diaboli)*
Arkansas River Shiner *(Notropis girardi)*
Bluehead Shiner *(Pteronotropis hubbsi)*
Chihuahua Shiner *(Notropis chihuahua)*
Bluntnose Shiner *(Notropis simus)*
Proserpine Shiner *(Cyprinella proserpina)*

Figure: 31 TAC §65.176

Endangered Species

MAMMALS
Mexican long-nosed Bat *(Leptonycteris nivalis)*
Jaguar *(Panthera onca)*
Jaguarundi *(Herpailurus (=Felis) yagouaroundi cacomitli)*
West Indian Manatee *(Trichechus manatus)*
Ocelot *(Leopardus (=Felis) pardalis)*
Finback Whale *(Balaenoptera physalus)*
Humpback Whale *(Megaptera novaeangliae)*
Gray Wolf *(Canis lupus)*
Red Wolf *(Canis rufus)*

BIRDS
Whooping Crane *(Grus americana)*
Eskimo Curlew *(Numenius borealis)*
Northern Aplomado Falcon *(Falco femoralis septentrionalis)*
Southwestern Willow Flycatcher *(Empidonax traillii extimus)*
Brown Pelican *(Pelecanus occidentalis)*
Attwater's Prairie-chicken *(Tympanuchus cupido attwateri)*
Interior Least Tern *(Sterna antillarum athalassos)*
Black-capped Vireo *(Vireo atricapilla)*
Golden-cheeked Warbler *(Dendroica chrysoparia)*
Red-cockaded Woodpecker *(Picoides borealis)*

REPTILES
Hawksbill Sea turtle *(Eretmochelys imbricata)*
Kemp's Ridley Sea turtle *(Lepidochelys kempii)*
Leatherback Sea turtle *(Dermochelys coriacea)*

AMPHIBIANS
Barton Springs Salamander *(Eurycea sosorum)*
Texas blind Salamander *(Typhlomolge rathbuni)*
Houston Toad *(Bufo houstonensis)*

FISHES
Fountain Darter *(Etheostoma fonticola)*
Big Bend Gambusia *(Gambusia gaigei)*
Clear Creek Gambusia *(Gambusia heterochir)*
Pecos Gambusia *(Gambusia nobilis)*
San Marcos Gambusia *(Gambusia georgei)*
Rio Grande Silvery Minnow *(Hybognathus amarus)*
Comanche Springs Pupfish *(Cyprinodon elegans)*
Leon Springs Pupfish *(Cyprinodon bovinus)*
Smalltooth Sawfish *(Pristis pectinata)*

MOLLUSCS
Pecos Assiminea Snail *(Assiminea pecos)*

CRUSTACEA
Peck's Cave Amphipod *(Stygobromus (=Stygonectes) pecki)*

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 Department of Agriculture

Prohibited Noncommercial Cotton Administrative Penalty Matrix

The Texas Agriculture Code (the "Code") §12.020 confers administrative authority on the Texas Department of Agriculture (the department) to assess administrative penalties against any person who violates provisions of Chapter 74 of the Code or a rule adopted pursuant to Chapter 74. The department has implemented stricter enforcement procedures for prohibited noncommercial cotton to reduce hostable habitat for the boll weevil and advance boll weevil eradication in the state. The department hereby establishes an interim prohibited noncommercial cotton administrative penalty matrix.

Three factors are to be considered when assessing administrative penalties: (1) the number of weeks, or portion of a week, the field or property has been out of compliance; (2) the number of acres out of compliance; and (3) any efforts by the producer or landowner to comply with a notice issued by the department. These factors were developed in accordance with §12.020(d) of the Code and with consideration of the purpose and function of the cotton pest control program. The longer a field is left undestroyed or untreated and the more acres that are not in compliance, the greater the probability that boll weevils will cause damage, reproduce, and enter diapause. Diapausing insects represent a threat the following season to cotton in neighboring fields.

PROHIBITED NONCOMMERCIAL COTTON PENALTY FORMULA

A penalty for failure to destroy prohibited noncommercial cotton plants or enter into a compliance agreement with the department within fourteen days of notification by the department of prohibited noncommercial cotton in a field or property will be calculated using the following formula: the penalty will consist of a base amount of $250 per field plus an adjustable amount of $5.00 per acre per each 7 days, or for each portion of a 7 day period, of noncompliance.

Calculation of the number of weeks, or each portion of a week, a field is out of compliance will be counted beginning on the fifteenth day after the official notification to the land operator until the day on which an inspection of the field was found to be compliant.

If a field or property is brought into compliance within fourteen days of the date of notification by the department, no penalty will be assessed. To the extent that the land operator brings a portion of the total acreage into compliance after fourteen days from date of notification of prohibited noncommercial cotton, the department may reduce the adjustable portion of a penalty up to 50%.

The department may increase the adjustable portion of a penalty up to 50% if in any of the previous three years the operator/landowner has committed a violation that resulted in a penalty for prohibited noncommercial cotton. The department also may make reductions in the adjustable portion of a penalty based upon extenuating circumstances as justice may require.

This interim penalty matrix is effective immediately upon publication in the *Texas Register.* However, the department is seeking comments on the interim matrix from interested persons. Comments on the penalty matrix may be submitted to Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this interim matrix in the *Texas Register.* Any changes to the penalty matrix resulting from comments received will be published in the final matrix and will supersede this interim matrix upon its publication in the *Texas Register.*

TRD-200901610
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 29, 2009

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Request for Information: Broadband Mapping Project

Statement of Purpose. The Texas Department of Agriculture (TDA) requests information for the delivery of broadband service to unserved and underserved Texans. TDA anticipates seeking grants administered through the National Telecommunications and Information Administration (NTIA) and/or the Rural Utilities Service of the United States Department of Agriculture to secure funds for a statewide mapping project, and possibly also for broadband service delivery expansion into more unserved and underserved areas of the state. These funds have been appropriated in the American Recovery and Reinvestment Act (ARRA) of 2009 and TDA is taking this action in anticipation of decisions from the federal agencies on how they will use state governments to administer the funds. This is not a request for proposals but the information submitted will be helpful in developing such a request once the federal agencies make administration decisions.

Pursuant to the initiatives set forth in Broadband Data Improvement Act of 2008 (hereinafter "BDIA"), 47 U.S.C. 1301, et seq., the TDA anticipates the mapping project will be utilized to: (1) provide a baseline assessment of broadband service deployment in the State of Texas; (2) identify and track areas that have low levels of broadband service deployment, the rate at which residential and business users adopt broadband service and other related technology information services, and possible suppliers of such services; (3) identify barriers to the adoption by individuals and businesses of broadband service and related technology information services, including whether or not the demand for services is absent or the supply for such services is capable of meeting the demand for such services; (4) identify the speeds of broadband connections made available to individuals and businesses within the State of Texas; (5) create or facilitate, in accordance with the BDIA a local technology planning team to benchmark technology use across relevant community sectors, set goals for improved technology use within each sector; and develop a tactical business plan for achieving its goals, with specific recommendations for online application development and demand creation; (6) establish a plan to work collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy; (7) establish a plan to improve computer owner-

ship and Internet access for unserved areas and areas in which broadband penetration is significantly below the national average; (8) collect and analyze detailed market data concerning the use and demand for broadband service and related information technology services; (9) develop a plan to facilitate information exchange between public and private sectors regarding the use and demand for broadband services between public and private sectors; and (10) create within the State of Texas a geographic inventory map of broadband services, including the data rate benchmarks utilized by the Federal Communications Commissions which reflect different speed tiers, which shall identify gaps in such service through geographic information system mapping and provide a baseline assessment of statewide broadband deployment in terms of households with high speed availability.

Eligibility. Responses will be accepted from contractors with proven experience in delivering statewide broadband mapping, and that can specifically address the initiatives and capabilities set forth in the BDIA. Customer references and a list of completed projects will be required. Additionally, companies with business interest in broadband service delivery and contractors with expertise in broadband service delivery are encouraged to submit information on the topics requested.

Response to RFI. Each response must include the following information:

a. Overview of the Company

Provide a description of the company, including general experience and history in performing broadband mapping services or experience with broadband service delivery, date founded, number and location of offices, total number of professionals and employees in the company, description of specialty practice areas and company philosophy. Describe structure of company ownership (e.g., publicly held corporation, partnership, etc.) any parents, affiliates or subsidiaries of the company.

b. Detailed Plan of the Proposed Broadband Mapping Service

Information provided should include, but not be limited to, responses to the following questions and requests:

(1) Describe the approach your company would take in preparing a map of existing facilities with respect to the following matters: geographic granularity, identification of facilities based on speed tiers and broadband technology, feasibility of integrating a state map into a searchable national database, access by telecommunications providers and public entities to mapping information, and updating the map after the completion of the initial mapping.

(2) In identifying areas that are underserved or unserved, describe the approach your company would take to assess demand for broadband service and the long-term feasibility of broadband service. How would important public and quasi-public users, such as education, health, law enforcement, and local government institutions be incorporated into the assessment?

(3) What steps would your company take to ensure widespread participation of broadband providers and potential providers in the collection of data and the representation of their facilities on the broadband map, including steps to address issues relating to confidentiality of competitively sensitive information and other challenges that may arise?

(4) Please provide an estimate of the cost of preparing a broadband map for the State of Texas. Specify the major tasks that would be included in preparing the map. NOTE: TDA may identify specific project parameters in a possible subsequent request for proposals. Submissions to this current request for information will be used only for informational purposes and it is understood that the cost estimates in subsequent submissions will vary according to those project parameters.

(5) How long would it take your company to complete the broadband map from the date of an award of a contract by the State of Texas?

(6) Please list any prior experience your company has in preparing comprehensive broadband maps for other states.

(7) Does your company have recommendations on how the State of Texas could satisfy its 20% matching obligation under the BDIA? Could your company assist the State of Texas in identifying organizations that would participate in satisfying the match obligation?

(8) Could your company provide assistance in preparing a BDIA grant request for funds for mapping?

(9) Would a broadband map prepared by your company assist the State of Texas in establishing programs to improve computer ownership and Internet access for underserved and unserved areas? If so, how?

Text should be no less than 10-point font type size (Times New Roman or Arial).

The Next Steps. This Request for Information (RFI) is issued solely to assist TDA in its planning processes and for data collection purposes. It does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent a definite intention to issue an RFQ or RFP in the future. This RFI does not commit the department to contract for any supply or service whatsoever.

TDA will review all responses that are timely submitted. If funds become available to TDA through the ARRA for this purpose, the department will determine the best plan for broadband mapping and pursue developing it. As the next step, all persons who are interested in developing a broadband inventory map of Texas would be requested to submit their proposal for developing this product.

Deadline for Submission of Responses. Responses to this request should be submitted to Mr. Rick Rhodes, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78711. Fax: (888) 216-9867, e-mail: rick.rhodes@texasagriculture.gov. Submissions must be received no later than 5:00 p.m. on May 15, 2009.

TDA will send an acknowledgement receipt by email indicating the response was received.

Assistance and Questions. Please contact Rick Rhodes (512) 463-7577 or by email at rick.rhodes@texasagriculture.gov with any questions you may have.

TRD-200901613
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 29, 2009

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Request for Proposals: Texas-Mexico Agriculture Exchange Program

Statement of Purpose

The Texas Department of Agriculture (TDA) is requesting proposals for educational exchange opportunities under the Texas-Mexico Agriculture Exchange Program. The purpose of this program is to provide an educational exchange to share information and improve understanding between Mexican and Texas agricultural producers on agricultural production and trade in both states. TDA recently signed a Memorandum of Understanding with the Corporation for Rural Agriculture of

Nuevo Leon to implement this program. This will provide a partnership for identifying high quality exchange participants who are appropriately positioned in the Mexican agricultural industry and will therefore establish lasting international business partnerships.

Eligibility

Proposals will be accepted from any producer association, industry organization or university located in the state of Texas.

Program Description

Under the terms of the program, participating organizations will host an exchange participant for a certain term to provide educational training and information sharing regarding the organization's agriculture sector. The exchange participant will work with the host agricultural operation or in an agribusiness and participate in industry activities to gain knowledge about production practices and industry structure.

Exchange participants will be 18-40 years of age, have at least one year of experience working on a farm, ranch or related agribusiness, be enrolled in an educational program in their home country and/or have a recommendation from their home producer or agribusiness organization; have no record of criminal violations; have a passport and obtain all necessary visa documentation; and have proof of medical insurance.

The term of the exchange can be a one-month to six-month term, depending on the needs of the exchange participant and hosting entity. Participating organizations can structure the term of each exchange according to the needs of the applicant and participant and schedule of industry activities.

Upon receipt of proposals, TDA will share the opportunities with participating Mexican states. TDA will assist in matching participants with host organizations. TDA will also provide assistance in identifying opportunities to introduce exchange participants to state and federal government agricultural policies during the term of the exchange.

Funding

Host organizations should provide room and board for the participant as well as transportation costs to any industry events/opportunities included in the exchange. Participants are responsible for the travel expenses to and from the exchange location.

Proposal Requirements

Interested entities should submit an application containing the following information:

1. Host organization contact information regarding exchange.

2. Anticipated term of the exchange.

3. Detailed description of the training and educational opportunities the exchange participant will have as a guest of your organization.

4. Identification of host agricultural operations or businesses and room and board available for the participant.

The preferred application is included as Attachment 1 to this RFP.

Submission Dates/Locations

Proposals should be submitted via mail or e-mail at the addresses below. A hard copy or electronic copy of the proposal must arrive no later than 5:00 p.m. on June 31, 2009 to the following address:

Physical Address:

Texas Department of Agriculture, Attn: Jason Fenton, 1700 N. Congress Ave., 11th Floor, Austin, TX 78701.

Mailing Address:

Texas Department of Agriculture, Attn: Jason Fenton, P.O. Box 12847, Austin, TX 78711.

The electronic copy should be submitted to: Jason.Fenton@TexasAgriculture.gov.

Questions

Questions regarding this program should be directed to Jason Fenton, with the Texas Department of Agriculture via e-mail at: Jason.Fenton@TexasAgriculture.gov, or via telephone at (512) 475-1615.

ATTACHMENT 1

TODD STAPLES, COMMISSIONER

Texas Department of Agriculture

Request for Proposal
Texas Mexico-Agriculture Exchange Program

Host Organization				
Organization Contact				
☐ Mr. ☐ Mrs. ☐ Ms. ☐ Other____	First Name	M. I.	Last Name	☐ Sr. ☐ Jr.
Title		Organization		
Phone Number		E-mail Address		

PROJECT DETAILS
1. Please provide a detailed description of the training and educational opportunities the exchange participant will have as a guest of your organization. This could include training and work on an agricultural operation, interaction with industry leaders, participation in industry meetings, etc. The exchange participant could take part in multiple opportunities throughout the term of their stay and could be located at multiple locations or could work at multiple places for a more varied experience.
2. Please describe the anticipated term of the exchange. What is the length of time required for this opportunity? e.g., June 1 – August 1, or May 1 – September 1.
3. Please describe funding available to support the exchange. Will there be a stipend available for the exchange participant or what expenses might be covered? Paying all expenses is not a requirement of the program, but it is expected that room and board would be provided for the participant at no charge. Please describe with as much detail as possible where the participant will be living during the exchange and how meals will be provided.
4. What opportunities exist within your industry for the participant to gain exposure to industry and governmental organizations and policies? e.g., Learn standard industry practices, meet local elected officials, meet state and federal representatives, create trade and networking contacts, etc.

5. Does your organization have any specific characteristics they are looking for an exchange participant? What type of agriculture background or expertise should a participant have to complete the exchange?	
6. Please provide any additional information you believe would be beneficial.	
Please mail completed RFP to: Texas Department of Agriculture Attention: Jason Fenton P.O. Box 12847 Austin, Texas 78711	**TDA Contact Person:** Jason Fenton External Relations (512) 475-1615 Jason.Fenton@TexasAgriculture.gov

TRD-200901594
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 28, 2009

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Office of the Attorney General

Texas Clean Air Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of a civil enforcement lawsuit under the Texas Clean Air Act and the Texas Water Code. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed Agreed Final Judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Approval of Agreed Final Judgment in *Harris County, Texas and the State of Texas v. Reytec Construction Resources, Inc., et al.;* Cause No. 2007-28176, in the 281st Judicial District Court, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act and the Texas Administrative Code. The defendants Reytec and Magnum have reached an agreement resolving the issues in the case. The suit seeks civil penalties and attorney's fees. The Clean Water Act violations are for rupturing a propane pipeline during a construction project in Harris County. Flammable and toxic gas from the rupture resulted in evacuations of the area for three days.

Proposed Agreed Final Judgment: The Agreed Final Judgment awards $75,500 in civil penalties to the State and Harris County. The State and Harris County will divide the awarded amount. The Agreed Final Judgment also awards the State $2,500 in attorney's fees.

For a complete description of the proposed settlement, the complete Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Ryan Fite, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200901561
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 27, 2009

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 17, 2009, through April 23, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 29, 2009. The public comment period for this project will close at 5:00 p.m. on May 29, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Town of South Padre Island; Location: The project is located within the southern approximate 6.25 miles of beachfront in the Town of South Padre Island (Town), and the northern 6.25 miles of Park Road 100 Right-of-Way (ROW) north of the Town, Cameron County, Texas. The project can be located on the U.S.G.S quadrangle map entitled: Port Isabel NW, Texas. Approximate UTM Coordinates in NAD

83 (meters): Zone 14; Easting: 683160; Northing: 2890585. Project Description: The applicant proposes to amend an existing Department of the Army Permit No. 22190(01). Under the proposed amendment, the applicant would conduct larger scale beach nourishment activities within the previously authorized 6.25-mile shoreline. In addition to the previously authorized sand borrow area located within the State Highway 100 ROW, the applicant is requesting to borrow sand from a beneficial use area located near the entrance of the Brazos Santiago Pass and four offshore ridge sand sources. CCC Project No.: 09-0116-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01276 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Genesis Producing Company; Location: The project is located in Copano Bay in State Tracts (STs) 97, 112, and 113, approximately 8.1 miles northwest of Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bayside, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 681852; Northing: 3107396. Project Description: The applicant proposes to construct a new 5,305-foot, 8-inch diameter pipeline from an existing surface well location in ST 97 and tie it in to an existing pipeline in ST 113. CCC Project No.: 09-0117-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00739 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Genesis Producing Company; Location: The project is located in Copano Bay in State Tract 115, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Rockport and Lamar, Texas. Approximate UTM Coordinates in NAD 83 (meters): Proposed ST 115 Well 1: Zone 14; Easting: 679319; Northing: 3106671. Existing Pipeline tie-in: Zone 14; Easting: 679350; Northing: 3106740. Project Description: The applicant proposes to install, operate and maintain a well structure, flowlines and production platform for the production, transportation and sale of oil and gas resources. Once the new well is complete, the applicant proposes to construct an 8-inch diameter 487-foot flowline to tie in to an existing platform in ST 115. CCC Project No.: 09-0118-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00866 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Genesis Producing Company; Location: The project is located in Copano Bay in State Tract 95, approximately 8.0 miles northwest of Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Bayside, Texas. Approximate UTM Coordinates in NAD 83 (meters): Proposed ST 95 Well 1: Zone 14; Easting: 679793; Northing: 3098319. Existing Pipeline tie-in: Zone 14; Easting: 679828; Northing: 3107581. Project Description: The applicant proposes to install, operate and maintain a well structure, flowlines and production platform for the production, transportation and sale of oil and gas resources. Once the new well is complete, the applicant proposes to construct a 8-inch diameter 337-foot flowline to tie in to an existing platform in ST 95. CCC Project No.: 09-0119-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00867 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Kirby Inland Marine; Location: The project is located in Old River, at 18350 Market Street, in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 300007; Northing: 3297180. Project Description: The applicant proposes to mechanically dredge a barge fleeting area to a depth of -15 feet below mean low tide. Approximately 22,000 cubic yards of material is proposed to be removed. The applicant proposes to place dredged material in uplands on their property at their Buffalo Bayou Barge Fleeting Facility. This Dredge Material Placement Area was previously permitted under permit #19003(04). CCC Project No.: 09-0132-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01691 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Harvest (US) Holdings, Inc.; Location: The project is located near Alligator Point, in West Bay, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sea Isle, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 294855; Northing: 3229191. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities at two locations within the project area. Such activities include dredging for access, installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, flowlines and pipelines. The proposed dredged material disposal areas shown in the project plans are potential sites; however, no further specific details were provided at this time. CCC Project No.: 09-0135-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01236 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: STP Nuclear Operating Company; Location: The project is located on the Colorado River, at 6865 FM 521, in Wadsworth, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Matagorda, Texas and Palacios NE, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 207053; Northing: 3183388. Project Description: The applicant proposes to amend Permit No. 10570 to repair approximately 1,600 feet of bank revetment along the Colorado River. Sheet piling will be installed, with approximately 1,700 cubic yards of rock for backfill material, and 400 cubic yards of riprap or A-jacks protection will be placed outside the sheet pile and around the blowdown discharge pipes. CCC Project No.: 09-0142-F1. Type of Application: U.S.A.C.E. permit application #SWG-1994-02054 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: T-C Oil Company; Location: The project is located in Aransas and Refugio Counties, Texas, and includes Mission Bay, areas around the city of Bayside in Refugio County, and a portion of Copano Bay. The project can be located on the U.S.G.S. quadrangle maps entitled: Bayside, Mission Bay, Woodsboro, Twin Mott Lake, Lamar, and St. Charles Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; SE Corner, Bayside Quad, Easting: 675000; Northing: 3106900; SW Corner, Woodsboro Quad, Easting:

665000, Northing: 3115250; NW Corner Twin Mott Lake Quad, Easting: 694500; Northing: 3132200; NE Corner St. Charles Bay Quad, Easting: 696700, Northing: 3123050. Project Description: The applicant proposes to conduct standard 3-D seismic survey operations within an approximate 123-square-mile area located in Aransas and Refugio Counties that includes Mission Bay and a portion of Copano Bay. CCC Project No.: 09-0143-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00999 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Wesley Dishon; Location: The project is located at the Idylwood Street and East Roundbunch Road intersection, in Bridge City, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Orangefield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 421420; Northing: 3322581. Project Description: The applicant would like to obtain an after-the-fact permit. The applicant has dredged two (2) canals adjacent to Cow Bayou (the North Canal and a portion of the South Canal). CCC Project No.: 09-0148-F1. Type of Application: U.S.A.C.E. permit application #SWG-2003-01748 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Port of Galveston (Galveston Wharves); Location: The project is located on the Galveston Ship Channel, at the Port of Galveston wharves along Harborside Drive, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in 83 (meters): Zone 15; Easting: 326729; Northing: 3244217. Project Description: The proposed project will provide for the closure and fill of numerous slips. Each slip will be backfilled with clean structural fill through the use of dump trucks, backhoes, draglines or pipeline to an elevation equal to or greater than the existing dock faces. The closure will consist of the installation of a retaining structure or sheet-pile wall across the entrance of each slip. The retaining structure will be placed in front of the slips along with a combination of silt fencing and booms to contain the fill materials and ensure water quality. CCC Project No.: 09-0150-F1. Type of Application: U.S.A.C.E. permit application #SWG-2000-02800 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200901614

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 29, 2009

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Comptroller of Public Accounts

Notice of Issuance

Request for Qualifications for Independent Examining Services for the Texas Comptroller of Public Accounts, #192h

A. Pursuant to Chapter 111, Subchapter A, §111.0045, Texas Tax Code, the Comptroller of Public Accounts (the Comptroller) issues this Request for Qualifications (RFQ #192h) from qualified independent persons or firms to perform certain services described below. As a clarification, as used in this RFQ #192h and the Comptroller's rules codified at 34 TAC §3.3, the services under any contracts resulting from this RFQ mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

B. The Comptroller issued this RFQ #192h by posting it on the Electronic State Business Daily on May 8, 2009, and, by publishing this RFQ #192h in the May 8, 2009 issue of the *Texas Register.* The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform examinations that meet the requirements of §111.0045, Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract examiners as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

C. The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract examiners as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract examiners selected under previous RFQs must attend the Mandatory Orientation conducted by the Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ. HOWEVER, RESPONDENTS THAT ARE EXISTING CONTRACTORS AND HAVE RECEIVED AN OFFICIAL NOTICE OF INTENT TO RENEW A CONTRACT THROUGH AUGUST 31, 2010 DO NOT NEED TO SUBMIT A RESPONSE TO THIS RFQ. The contract term under this RFQ shall be for one year ending August 31, 2010 with two (2) renewal options of one (1) year each exercised one (1) year at a time.

D. By this contract examination program, the Comptroller intends to increase the number of examinations of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with §111.0045, Texas Tax Code, the Comptroller's administrative rules and procedures and other applicable law.

E. The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three hours of auditing; and

(ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

F. For state fiscal year 2010 beginning September 1, 2009, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of not to exceed $180,000 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner employees shall be considered, in the Comptroller's sole discretion, for one (1) initial $60,000 award and an additional award contingent upon satisfactory performance during the designated milestone periods. Firms in the form of any business entity that may lawfully perform examinations and which have two (2) or more examiners may be considered, in the Comptroller's sole discretion, not to exceed $180,000 per fiscal year during the Contract term, for multiple initial awards per firm of $60,000 for each qualifying examiner and additional awards contingent upon satisfactory performance during the designated milestone periods. Barring unforeseen circumstances only one (1) round of initial awards will be made at the beginning of the one (1) year initial contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year initial contract term. The Comptroller reserves the right, in its sole discretion, to reallocate, after their initial assignment, examination packages among contract examiners based on the Contractor's substantial performance or non-performance under the Contract terms so as to increase or decrease the number of examinations assigned to a particular contract examiner. Payment will be made in accordance with the terms of the Contract. Each Contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 1280 person hours of work for each $60,000 amount to complete at the rate of $46.88 per hour. The estimated hours will be calculated based on the average number of hours required in the past to complete the examinations of each type of business during a period to be determined at the sole discretion of the Comptroller, notwithstanding the fact that a previous examination of a specific taxpayer or business may have required more or less hours than the average. Examiners will be paid for assigned work completed to date in $10,000 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by the Comptroller as provided in the Agreement.

G. In performing assigned examinations and for the contracted lump sum payments, selected contract examiners will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

H. Under this RFQ, the maximum contract amount paid to any individual examiner without additional examiner employees, an individual examiner with additional examiner employees or a firm with multiple examiners will not exceed $180,000.00 for any state fiscal year during the term of the contract or any extensions.

I. Selected contract examiners must complete all work and submit all examination reports, workpapers and other deliverables no later than required under the terms of the proposed Agreement.

J. Selected contract examiners must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned examination.

K. Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ:

L. Section 2252.901, Texas Government Code reads as follows:

"(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the Agreement. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

It is the Comptroller's policy that an individual employed by the Comptroller during the last twelve (12) months may not provide services under the Contract as individual or employee of Contractor or another Contractor and may not receive any compensation under the Contract. The twelve (12) month period is measured from the date of separation from Comptroller employment until the date responses to this RFQ are due as stated in this RFQ.

Section 572.054, Texas Government Code, reads in pertinent part as follows:

"(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This §572.054(b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded $33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

M. Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no

later than September 1, 2009 upon completion of orientation or other timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple Agreements as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample Agreement. Any resulting Agreements are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any examinations to recipients of contract awards.

N. Questions; Proposed Contract: Questions concerning this RFQ must be in writing and submitted via hand delivery, facsimile, or e-mail no later than May 22, 2009, 2:00 p.m., Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th Street, ROOM 201, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 463-3669 or e-mail at contracts@cpa.state.tx.us. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Electronic State Business Daily notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than May 29, 2009 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions of the RFQ, revising or amending the RFQ and/or other documents attached to the RFQ. For these reasons, respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statements of Qualification. A copy of the sample contract, the standard form Respondent Questionnaire described below, mandatory Execution of Statement of Qualifications Form, Required Checklist for Statements of Qualification, and other required documents are all attached to this RFQ for reference and use by respondents.

O. Closing Date: An original with original ink signatures on each document within the Statement of Qualifications requiring signatures and ten (10) hard copies of each Statement of Qualifications clearly marked as copies must be overnighted or hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on June 12, 2009. Statements of Qualification received after this time and date will not be considered. No Statements of Qualification will be accepted in any other format or media other than hard copy. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

P. Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit F to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

2. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations; and (b) outlines the respondent's understanding of §111.0045, Texas Tax Code, other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as needed basis;

3. Respondent Identifying Information.

The respondent must provide the following identifying information:

a. name and address of the individual or business entity submitting the proposal;

b. names of all principals;

c. type of business entity (i.e. sole proprietorship, corporation, partnership, limited liability company, etc);

d. state of incorporation or organization and principal place of business (attach copies of articles or other certificates showing official approval by the pertinent governmental entity);

e. name and location of each local examination facility that relates to the respondent's performance under this RFQ;

f. name, address, business and home telephone number, fax number, cell phone number, and e-mail address of the respondent's principal contact person regarding the Contract;

g. the respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number, if any;

h. full name and address, telephone number, fax number, cell phone number and e-mail address for each shareholder, member, partner, and employee of the respondent who will perform services on the Contract;

i. detail any firm ownership changes which have occurred in the last three years. Are any changes pending?

j. detail any joint ventures or affiliations.

4. Respondent Questionnaire Exhibit A to the RFQ for each individual who will be involved in the project. The Respondent Questionnaire must be on the form contained on the addenda to the Electronic State Business Daily notice of issuance of this RFQ. The response to the RFQ must disclose all personnel who will perform professional services under the terms of the Agreement. Respondent understands only those persons disclosed by the Respondent Questionnaire will be admitted to the required orientation classes. Other equally qualified persons may be substituted, upon prior written consent of the Comptroller, for medical reasons or if the original examiner proposed leaves the firm responding to the RFQ. However, the preceding provisions shall not apply if the examiner disclosed is a sole proprietor or if the examiner disclosed is the sole principal in a business entity responding to this RFQ and no other principals or employees are equally qualified. This provision will be strictly enforced. All information on the Respondent Questionnaire form must be fully filled out and complete in all respects. Evaluation of respondents will be based in part on the information on this form and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Respondent Questionnaire detailing all courses, dates, and subject of courses by each person who applies to perform examination services may result in disqualification of the Statement of Qualifications;

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as needed basis if selected by the Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one year experience requirement in 34 TAC §3.3 to properly perform a sales and use tax examination with minimal supervision. If portions of any Comptroller publication, manual, or other document are used to prepare the examination plan or incorporated into the plan, the most current version must be used. The Comptroller's audit manuals may be found at the following internet location:

http://www.window.state.tx.us/taxinfo/audit/auditman.htm. Also see the Comptroller's Auditing Fundamentals Manual, Chapter 3 and 4 at http://www.window.state.tx.us/taxinfo/audit/auditfun/3aplan.htm and http://www.window.state.tx.us/taxinfo/audit/auditfun/4entranc.htm, respectively. Chapters 3 and 4 of the Sales Tax Policy/Procedure Manual are at http://www.window.state.tx.us/taxinfo/audit/salestax/3a.htm and http://www.window.state.tx.us/taxinfo/audit/salestax/4a.htm, respectively;

6. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including (a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned examinations; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment; and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Audit Fundamentals Manual;

7. Statement of whether or not the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations. In order to be a Historically Underutilized Business, a respondent must be registered as such with the Comptroller's Texas Purchasing and Support Services Division to its rules and regulations concerning the same. You may check the website at http://www.window.state.tx.us/procurement/prog/hub/hub-certification/ or call the Comptroller's HUB Coordinator, Hilda Galaviz at (512) 463-3911;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned examinations;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample Agreement, including, without limitation, the proposed fee arrangements, as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

10. Completed, initialed where applicable, and signed Execution of Statement of Qualifications Form on Exhibit B as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

11. Completed and signed Nondisclosure Agreement on the form set out on Exhibit D to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

12. Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages described in Section VIII of the Sample Agreement for Professional Services attached to this RFQ as Exhibit C and stating that the coverages are available to the respondent upon selection, if any, of the contract examiner pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Failure to provide information on EACH of the required coverages may result in disqualification of the Respondent's Statement of Qualifications. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the respondent's selection. Time is of the essence and no Agreements will be executed without the coverage required. A successful respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller;

13. Completed, signed, and initialed where applicable Criminal History Certification on the form set out on Exhibit E to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

14. Signed Statement of representation that the respondent and any persons holding equity interests in respondent and all persons listed as examiners in its Statement of Qualifications are neither respondents under any other Statement of Qualifications responding to this RFQ, nor are employed by, contracted with, and do not own any equity or debt interest in any other respondent to this RFQ; and

15. Compliance with any amendments, modifications, or other requirements and changes to the RFQ set out in the Official Response to Questions in connection with this RFQ and posted by the Comptroller on the Electronic State Business Daily prior to the Closing Date for this RFQ.

The above 15 items shall be submitted in the respondent's Statement of Qualification as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 15 items above may result in disqualification of the respondent but the Comptroller reserves the right to waive minor variations in responses in the best interests of the Comptroller and of the State of Texas.

Q. Mandatory Orientation Session: All respondents must attend, at their sole cost and expense, mandatory orientation session to be conducted by the Comptroller in Austin on July 28, 2009 through July 30, 2009 or as soon thereafter as possible. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ.

R. Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on the evaluation criteria set out on Exhibit G attached to and made a part of this RFQ. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Successful Respondents will be notified by e-mail of their preliminary selection prior to the Mandatory Orientation Session. Notice of contract awards will be published in the Electronic State Business Daily and the *Texas Register* as soon as possible after all Agreements, if any, resulting from this Statement of Qualifications, are fully executed. Respondents who do not receive a preliminary selection e-mail notice before date the Orientation Session begins should assume that they were not selected although the official notice of award will be not be published at the time of the Mandatory Orientation Session but will be posted at the time stated in the Summary of Schedule in the last paragraph of this RFQ or as soon as practical thereafter. The Electronic State Business Daily may be accessed online at: http://esbd.cpa.state.tx.us/.

S. Protests. Protests regarding this RFQ or actions taken under it shall be governed by the Comptroller's rule located at 34 TAC §1.72, Protests of Agency Purchases.

T. Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a respondent and approve of contract examiners on an individual basis based on the evaluation criteria. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar

services at any time as the Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

U. Under House Bill 3430, 80th Texas Legislature, (transferring §2177.052, Texas Government Code, to Chapter 322, Texas Government Code and redesignating it as §322.020) and as per the following requirements, no later than two (2) business days after Successful Respondent's receipt of notice from the Comptroller of Successful Respondent's tentative contract award, Successful Respondent (and no other respondents) must deliver to the Comptroller four (4) electronic copies of its complete proposal. Successful Respondent shall deliver these electronic copies to the Comptroller via overnight delivery in compliance with all of the following requirements:

Two CDs, each containing a complete copy of the Successful Respondent's Proposal in searchable pdf format. A complete copy of the Proposal includes all documents contained in the Proposal submitted in response to this RFQ including those documents with Successful Respondent's signature. These two identical CDs should be entitled: "Complete copy of [Name of Successful Respondent]'s Proposal. Comptroller's RFQ No. 192h."

Two CDs, each containing a copy of Successful Respondent's Proposal, in searchable pdf format, which has excised, blacked out, or otherwise redacted information from its Proposal that Successful Respondent reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Successful Respondent's Proposal, such as social security numbers). Each CD shall also contain an Appendix for Successful Respondent's Proposal which provides a cross reference for the location of all information redacted by Successful Respondent and a general description of the redacted information. These two identical CDs should be entitled "For Public Release: Redacted Version of [Name of Successful Respondent]'s Proposal and Exhibits. Comptroller's RFQ No. 192h."

* The Legislative Budget Board (LBB) has now implemented this contracts database. See the LBB website at www.lbb.state.tx.us. The Comptroller shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than 10 days after date of contract award. In submitting a Proposal in response to this RFQ, Respondents acknowledge that they understand and accept this requirement.

V. Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ by publication in the May 8, 2009, issue of the *Texas Register* and issuance of RFQ, including sample contract, on the Electronic State Business Daily--May 8, 2009, 10:00 a.m. CZT; Questions Due--May 22, 2009, 2:00 p.m. CZT; Posting of Official Responses to Questions--May 29, 2009, 5:00 p.m. CZT or as soon thereafter as practical; Statements of Qualification Due--Friday, June 12, 2009, 2:00 p.m. CZT; Mandatory Orientation--July 28, 2009 through July 30, 2009; Contract Execution--August 14, 2009, or as soon thereafter as practical; Notice of Contract Awards posted on Electronic State Business Daily and *Texas Register*--August 17, 2009 or as soon thereafter as practical; and Beginning of Examinations--September 1, 2009 upon completion of Orientation and Contract signature, or as soon thereafter as practical.

TRD-200901612

Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 29, 2009

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Notice of Request for Proposals

Pursuant to Chapter 403 and Chapter 2156, Texas Government Code, and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP #192g) for the purpose of obtaining Non-U.S. Equity Passive Index investment management services for the Board for the Texas Tomorrow Fund Guaranteed Tuition Plan (Texas Tomorrow Fund I). The selected contractor (Contractor) will advise and assist the Board and Comptroller in administering the Board's investment activities related to Non-U.S. Equity Passive Index Securities for Texas Tomorrow Fund I. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary Contractor. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, Contractor will be expected to begin performance of the contract on or about September 1, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, May 8, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CZT on Friday, May 8, 2009.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, May 15, 2009. Prospective proposers are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-Mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, May 29, 2009, the Comptroller expects to post responses to questions on the ESBD. Late Non-Mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CZT, on Friday, June 5, 2009. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board and Comptroller will make the final decision. The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board

shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - May 8, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - May 15, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - May 29, 2009; Proposals Due - June 5, 2009, 2:00 p.m. CZT; Contract Execution - September 1, 2009, or as soon thereafter as practical; Commencement of Services - September 1, 2009.

TRD-200901605
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 29, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/04/09 - 05/10/09 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 05/04/09 - 05/10/09 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-200901584
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 28, 2009

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Credit Union Department

Public Hearing Notice

The Credit Union Department will conduct a public hearing on behalf of the Credit Union Commission for the purpose of receiving oral comments on the following proposed new and amended rules: §§91.208, 91.209, 97.101, 97.102, 97.107, 97.113, 97.114, 97.205, 97.207, 97.300, 91.802, and 91.8000. The public hearing will be held at 9:00 a.m. on May 15, 2009 at 914 East Anderson Lane, Austin, Texas 78752. To be considered, an oral comment must be received at this public hearing; at the conclusion of the hearing, no further oral comments will be considered or accepted by the Commission.

Persons with disabilities who are planning to attend the hearing and who have special communication or other accommodation needs should contact Linda Clevlen at the Credit Union Department at (512) 837-9236. Requests should be made as far in advance of the hearing as possible.

TRD-200901595
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 28, 2009

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Deep East Texas Council of Governments

Request for Proposals

APCO P-25 Communications Infrastructure Project

I. Overview

The Deep East Texas Council of Governments (DETCOG) is now accepting bids for our APCO P-25 Communications Infrastructure Project. Bid documents may be picked up at the DETCOG office at 210 Premier Drive, Jasper, Texas 75951, through Wednesday, May 13, 2009, at 5 p.m.

II. Obtaining Full RFP and Submission Information

The full RFP can be obtained at: detcog.org, or by contacting:

Sheryl Benoit, Purchasing Agent

Phone: (409) 384-5704 ext. 230

Fax: (409) 384-5390

E-mail: sbenoit@detcog.org

Submission is due to DETCOG no later than 3 p.m. on May 18, 2009.

TRD-200901615
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: April 29, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 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. Section 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 **June 8, 2009**. Section 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 June 8, 2009**. 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, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Child, Inc. dba Flat Creek Crossing Ranch; DOCKET NUMBER: 2008-1918-PWS-E; IDENTIFIER: RN105284301; LOCATION: Blanco County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.110(c)(4)(A) and (d)(1)(C)(ii), by failing to monitor the disinfectant residual at representative locations in the distribution system and by failing to possess a test kit to measure the disinfectant residual which employs a diethyl-p-phenylenediamine indicator; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to operate the disinfectant equipment to maintain a free chlorine residual of 0.2 milligrams per liter throughout the distribution system; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.46(f), by failing to develop and maintain records of water works operation and maintenance activities; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead by a gasket or sealing compound and cover the well casing vent with 16-mesh or finer corrosion-resistant screen; 30 TAC §290.41(c)(3)(L), by failing to terminate the well blow-off line in a downward direction and at a point which will not be submerged by flood waters; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence to protect the facility's well; 30 TAC §290.43(c)(3), by failing to provide an overflow cover that fits tightly with no gap over 1/16 inch for the facility's ground storage tank; and 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; PENALTY: $2,168; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(2) COMPANY: Conroe Independent School District; DOCKET NUMBER: 2009-0289-MWD-E; IDENTIFIER: RN102319746; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012205001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total suspended solids (TSS) and total ammonia nitrogen; PENALTY: $3,020; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Geaux Corporation; DOCKET NUMBER: 2008-1881-WQ-E; IDENTIFIER: RN105423826; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and §305.125(1) and TPDES General Permit Number TXR15MI96, Part II Section D.1.b, by failing to renew authorization for storm water discharges associated with construction activities; 30 TAC §305.125(1), TPDES General Permit Number TXR15MI96, Part III Section F.2.a.i, and the Code, §26.121(a), by failing to adequately design erosion and sediment controls; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15MI96, Part III Section F.2.c.1 and 3, by failing to construct a sediment basin for a common drainage location that services an area with ten or more acres disturbed at one time; PENALTY: $12,625; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Harris County Fresh Water Supply District Number 61; DOCKET NUMBER: 2009-0200-MWD-E; IDENTIFIER: RN102183530; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010876002, Effluent Limits and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia-nitrogen (NH_3N); PENALTY: $4,600; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2009-0041-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Numbers 19823 and 5952A, Special Condition (SC) Number 1, Federal Operating Permit (FOP) Numbers 1320 and 2288, SC Number 13, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Number 1320, SC Number 2(f), and THSC, §382.085(b), by failing to report an emissions event within the 24-hour timeframe; PENALTY: $28,615; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: LI Holdings, Inc. (formerly known as Lide Industries, Inc.); DOCKET NUMBER: 2008-1926-AIR-E; IDENTIFIER: RN101698439; LOCATION: Mexia, Freestone County; TYPE OF FACILITY: tank manufacturing plant; RULE VIOLATED: 30 TAC §106.433(6)(A), Agreed Order Docket Number 2006-2045-AIR-E, Ordering Provisions 3(a)(iii) and (xi), New Source Review (NSR) Permit by Rule Registration Number 27190, and THSC, §382.085(b), by failing to comply with the ordering provisions of an agreed order and by exceeding permit by rule emissions limits; PENALTY: $28,378; Supplemental Environmental Project offset amount of $14,189 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Montgomery County Municipal Utility District Number 15; DOCKET NUMBER: 2009-0228-MWD-E; IDENTIFIER: RN102184413; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011395001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits for NH_3N; PENALTY: $950; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: David Golden dba Nema Enterprises; DOCKET NUMBER: 2007-1067-WQ-E; IDENTIFIER: RN103785259; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: sign manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $3,280; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Jose Oliveros; DOCKET NUMBER: 2009-0567-WOC-E; IDENTIFIER: RN105691760; LOCATION: Bexar County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Jon D. Piatt; DOCKET NUMBER: 2009-0564-OSI-E; IDENTIFIER: RN105053037; LOCATION: Denton, Denton

County; TYPE OF FACILITY: on site sewage; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Post Oak Hill Water Supply Corporation; DOCKET NUMBER: 2009-0092-PWS-E; IDENTIFIER: RN101175438; LOCATION: Burleson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: $355; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Reed Parque Limited Partnership; DOCKET NUMBER: 2009-0271-MWD-E; IDENTIFIER: RN101516375; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013968001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS and ammonia nitrogen; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Rolling Hills Water Service, Inc.; DOCKET NUMBER: 2009-0198-PWS-E; IDENTIFIER: RN101229177; LOCATION: Hood County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $355; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2309 Grave Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: SUDAN FEEDYARD, INC.; DOCKET NUMBER: 2008-1633-MLM-E; IDENTIFIER: RN101514404; LOCATION: Sudan, Lamb County; TYPE OF FACILITY: cattle feedlot; RULE VIOLATED: 30 TAC §321.36(1) and Concentrated Animal Feeding Operation (CAFO) General Permit Part III.A.10(c), by failing to collect carcasses within 24 hours of death and properly dispose of the carcasses within three days of death; 30 TAC §335.6(a), by failing to notify the executive director that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities; and 30 TAC §305.125(1) and CAFO General Permit Part III.A.10(b), by failing to properly maintain earthern confinement pens to ensure good drainage and minimize ponding; PENALTY: $7,280; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2009-0083-PWS-E; IDENTIFIER: RN101230290; LOCATION: Brown County; TYPE OF FACILITY: state park with PWS; RULE VIOLATED: 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(e)(4)(B), by failing to protect gas chlorination equipment and gas cylinders that are installed on the outside of a building from adverse weather conditions and vandalism; and 30 TAC §2980.42(d)(10)(C)(iv), by failing to provide clarification basins that are not equipped with mechanical sludge removal facilities with a side wall water depth of at least 12 feet; PENALTY: $1,095; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: The Crosby Group, Inc.; DOCKET NUMBER: 2009-0548-WQ-E; IDENTIFIER: RN103214631; LOCATION: Longview, Gregg County; TYPE OF FACILITY: iron and steel forgings; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2008-1904-AIR-E; IDENTIFIER: RN101058410; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 6221, SC Numbers 1 and 2.B., 40 CFR §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions and to maintain a constant pilot flame on the flare; and 30 TAC §101.201(a)(1)(B) and (c) and THSC, §382.085(b), by failing to report an emissions event and to submit a final report; PENALTY: $3,510; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Thompson Water Company, Inc.; DOCKET NUMBER: 2008-1214-MWD-E; IDENTIFIER: RN102329752; LOCATION: Freestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011508001, Effluent and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, five-day biochemical oxygen demand, and fecal coliform; PENALTY: $16,500; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: TransPecos Foods, L.P.; DOCKET NUMBER: 2009-0549-WQ-E; IDENTIFIER: RN102076635; LOCATION: Reeves County; TYPE OF FACILITY: frozen fruit; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(20) COMPANY: Trinity at Windfern LLC; DOCKET NUMBER: 2009-0327-MWD-E; IDENTIFIER: RN102916178; LOCATION: Harris County; TYPE OF FACILITY: mobile home park with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013509001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS and ammonia nitrogen; and 30 TAC §21.4 and the Code, §5.702, by failing to pay fees and associated late fees; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Union Oil Company of California; DOCKET NUMBER: 2009-0269-IWD-E; IDENTIFIER: RN102596210; LOCATION: Jefferson County; TYPE OF FACILITY: oil warehousing and storage; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000316000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for total copper and pH; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Carlie, Konkol, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(22) COMPANY: Eli Gravriel Sasson dba West Houston Mobile Home Park; DOCKET NUMBER: 2009-0024-MWD-E; IDENTIFIER: RN102182920; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014830001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014830001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monthly discharge monitoring reports; PENALTY: $4,892; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Whitehead Construction, Inc. dba Ponderosa Estates; DOCKET NUMBER: 2009-0550-WQ-E; IDENTIFIER: RN105705131; LOCATION: Ector County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(24) COMPANY: Gail A. Wright; DOCKET NUMBER: 2009-0250-LII-E; IDENTIFIER: RN105168207; LOCATION: Plano, Collin County; TYPE OF FACILITY: irrigator; RULE VIOLATED: 30 TAC §344.24(a) (previously 30 TAC §344.70), by failing to comply with local regulations that require reasonable inspection requirements, ordinances, or regulations designed to protect the PWS; PENALTY: $356; ENFORCEMENT COORDINATOR: Michael Graham, (806) 796-7092; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200901580
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of March 30, 2009 through April 23, 2009.

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

AQUA UTILITIES INC. which operates the Country View Estates water system, a reverse osmosis drinking water plant, has applied for a new permit, proposed Permit No. WQ0004860000, to authorize the disposal of reverse osmosis reject water at a daily average flow not exceed 15,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and evaporation ponds are located northeast of Medina Lake on Park Road 37, approximately 2.5 miles west of State Highway 16 and approximately 10.5 miles northwest of the City of Helotes, on County Scene Road, approximately 0.2 mile north of Park Road 37, Medina County, Texas.

CITY OF BELLVILLE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010385002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 307 West Hickory Street, approximately 4,500 feet southwest of the Austin County Courthouse and approximately 1.0 mile south-southwest of the intersection of State Highway 36 and State Highway 159 with Farm-to-Market Road 1456 in the City of Bellville in Austin County, Texas.

SOUTH HAMPTON RESOURCE INC. which operates a bulk organic chemicals manufacturing plant, has applied for a minor amendment to clarify the reporting requirements for the two (2) separate discharges that occur and are reported at Outfall 003. The existing permit WQ0001403000 authorizes the discharge of process wastewater commingled with cooling tower blowdown, boiler blowdown, and storm water runoff at a daily average flow not to exceed 114,000 gallons per day via Outfall 001; storm water bypass, boiler blowdown, cooling tower blowdown, and steam condensate on an intermittent and flow variable basis via Outfall 002; storm water from the diked storage tank areas (tanks 52, 54, 55, 56, 57, 61, 64, 83 and 84) on an intermittent and flow variable basis via Outfall 003; and storm water from the diked storage tank area (product storage/shipment facility) on an intermittent and flow variable basis via Outfall 004. The facility is located the manufacturing plant is located on Farm-to-Market Road 418 West, approximately 1,000 feet north of the intersection of Farm-to-Market Road 418 and Farm-to-Market Road 1122, and 3.5 miles northwest of the City of Silsbee, Hardin County, Texas.

CITY OF LOCKNEY has applied for a renewal of Permit No. WQ0010211001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day via surface irrigation of 112 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 0.1 mile south of U.S. Highway 70 and 1.0 mile east of Farm-to-Market Road 378, and southeast of the City of Lockney in Floyd County, Texas.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3 has applied for a renewal of TPDES Permit No. WQ0010797001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day. The facility is located approximately 3/4 mile south southeast of Nolanville, on South Nolan Creek in Bell County, Texas.

CITY OF DICKENS has applied for a renewal of Permit No. WQ0011138001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 44,000 gallons per day via surface irrigation of 200 acres of privately owned farm 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 3,200 feet south of U.S. Highway 82 and one mile east of State Highway 70 in Dickens County, Texas. The wastewater treatment facility and disposal site are located in the drainage basin of Salt Fork Brazos River in Segment No. 1238 of the Brazos River Basin.

AQUA UTILITIES INC. has applied for a major amendment to TPDES Permit No. WQ0011193001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 800,000 gallons per day to a daily average flow not to exceed 960,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Fisher and Brittmore Roads in Harris County, Texas.

AQUA DEVELOPMENT INC. has applied for a renewal of TPDES Permit No. WQ0014175001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 2.5 miles east of the intersection of Farm-to-Market Road 360 and State Highway 36 in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 152 has applied for a renewal of TPDES Permit No. WQ0014532001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located along Rice Field Road, 3,600 feet southeast of the intersection of Farm-to-Market Road 2977 and Rice Field Road in Fort Bend County, Texas 77469.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 94 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014656001 to reduce the Interim II phase daily average flow from 560,000 gallons per day to 355,000 gallons per day and authorize sludge transport to Blue Bell Manor Utility Co., Inc., TPDES Permit No. WQ0011473001. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,080,000 gallons per day. The facility is located approximately 8,300 feet southeast of the intersection of Springs Trails Ridge and Riley-Fuzzell Road on the north side of Spring Creek in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901606
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2009

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Notice of Water Rights Applications

Notice issued April 14, 2009 through April 22, 2009.

APPLICATION NO. 12393; Intercontinental Terminals Company, LLC, P.O. Box 698, Deer Park, Texas 77536, Applicant, has applied for a Water Use Permit to divert and use not to exceed 60 acre-feet of water per year from two diversion points on Buffalo Bayou (the Houston Ship Channel), tributary of the San Jacinto River, tributary of Galveston Bay, San Jacinto River Basin, for industrial purposes in Harris County. The application was received on November 7, 2008, and additional information was received on January 22, and February 19, 2009. Fees received on October 1, 2008, from a previously returned application were retained and applied to the current application. The application was declared administratively complete and accepted for filing on January 26, 2009. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12-3575D; B.N. Huddleston, P.O. Box 109, DeLeon, Texas 76444, Applicant, has applied for an amendment to Certificate of Adjudication No. 12-3575 to extend or delete the expiration date of December 31, 2009 to divert and use water from three reservoirs on an unnamed tributary of Copperas (Rush) Creek and on Copperas (Rush) Creek, Brazos River Basin in Comanche County. More information on the application and how to participate in the permitting process is given below. The application and a portion of the fees were received on January 12, 2009. Additional information and fees were received on March 9 and 17, 2009. The application was accepted for filing and declared administratively complete on March 19, 2009. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901607
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2009

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 24, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. The Fort Worth Boat Club; SOAH Docket No. 582-08-2379; TCEQ Docket No. 2007-1117-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against The Fort Worth Boat Club on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The

comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200901608
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2009

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 27, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Rodney Hyer; SOAH Docket No. 582-09-2073; TCEQ Docket No. 2007-0553-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Rodney Hyer on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200901609
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2009

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Texas Facilities Commission

Request for Proposals #303-9-11601

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-11601. TFC seeks a five (5) or ten (10) year lease of approximately 3,526 square feet of office space in Cleveland, Texas.

The deadline for questions is May 22, 2009, and the deadline for proposals is June 5, 2009, at 3:00 p.m. The award date is July 10, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82174.*

TRD-200901602
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 28, 2009

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Request for Proposals #303-9-11609

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-9-11609. TFC seeks a five (5) or ten (10) year lease of approximately 12,441 square feet of office space in Fort Worth, Tarrant County, Texas.

The deadline for questions is May 19, 2009 and the deadline for proposals is May 29, 2009 at 3:00 p.m. The award date is July 15, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82183.*

TRD-200901581
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 28, 2009

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Request for Proposals #303-9-11647

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-9-11647. TFC seeks a five (5) or ten (10) year lease of approximately 5,909 square feet of office space in Galveston County, Texas.

The deadline for questions is May 15, 2009, and the deadline for proposals is May 29, 2009, at 3:00 p.m. The award date is June 30, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82164.*

TRD-200901593
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 28, 2009

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Request for Proposals #303-9-11657

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-9-11657. TFC seeks a five (5) or ten (10) year lease of approximately 14,060 square feet of office space in San Benito, Texas.

The deadline for questions is May 19, 2009 and the deadline for proposals is May 29, 2009 at 3:00 p.m. The award date is July 15, 2009.

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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82170.*

TRD-200901583
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 28, 2009

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Request for Proposals #303-9-11662

The Texas Facilities Commission (TFC), on behalf of the Texas Animal Health Commission, announces the issuance of Request for Proposals (RFP) #303-9-11662. TFC seeks a five year lease of approximately 5,400 square feet of warehouse space in Rockdale, Texas.

The deadline for questions is May 15, 2009 and the deadline for proposals is May 22, 2009 at 3:00 p.m. The award date is June 17, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82158.*

TRD-200901579
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 27, 2009

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Request for Proposals #303-9-11663

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-9-11663. TFC seeks a five or ten year lease of approximately 13,399 square feet of office space in San Antonio, Texas.

The deadline for questions is May 18, 2009 and the deadline for proposals is May 28, 2009 at 3:00 p.m. The award date is July 15, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82163.*

TRD-200901620
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 29, 2009

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Request for Proposals #303-9-11670

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department, announces the issuance of Request for Proposals (RFP) #303-9-11670. TFC seeks a five year lease of approximately 1,227 square feet of office space in San Marcos, Texas.

The deadline for questions is May 19, 2009 and the deadline for proposals is May 29, 2009 at 3:00 p.m. The award date is July 15, 2009. 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 TFC Purchaser Sandy Williams at (512) 475-0453. 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=82159.*

TRD-200901619
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 29, 2009

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Golden Crescent Workforce Development Board

Public Notice

The Workforce Solutions Golden Crescent announces the availability of their Draft Strategic Plan Modification for October 1, 2009 through September 30, 2010 for public comment beginning May 13, 2009 through June 24, 2009. The plan can be viewed at Workforce Solutions Golden Crescent at one of the following locations: http://www.gcworkforce.org; 120 S. Main #501, Victoria, Texas; 1800 S. Highway 35 #H, Pt. Lavaca, Texas; 1137 N. Esplanade, Cuero, Texas; 329 W. Franklin, Goliad, Texas; 427 St. George #101, Gonzales, Texas; 903 S. Wells, Edna, Texas; 727 S. Promenade, Hallettsville, Texas; and 307 Crittenden St., Yoakum, Texas.

Programs provided by the Workforce Solutions Golden Crescent are Career Center services for the general public, including at a minimum Wagner-Peyser Employment Services; Workforce Investment Act services for adults, dislocated workers, and youth; Temporary Assistance for Needy Families Choices Program; Supplemental Nutrition Assistance Program Employment & Training; Project Reintegration of Offenders; TAA/NAFTA/TAA; Child Care Services; Child Care Training, and Communities In Schools programs. Eligible program beneficiaries who reside in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, and Victoria Counties may be provided appropriate employment and educational services through these programs.

All persons wishing to comment on the Strategic Plan may do so at one of the addresses above or by fax to (361) 573-0225 no later than June 24, 2009. Corrections and changes to this notice and/or the Strategic Plan may be found on our website at http://www.gcworkforce.org.

TRD-200901624

Henry Guajardo
Executive Director
Golden Crescent Workforce Development Board
Filed: April 29, 2009

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Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rate for Large, State-Operated Intermediate Care Facilities for Persons with Mental Retardation

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR).

Per Diem Rates for Large, State-Operated ICF/MR Services Large State-Operated ICF/MR Facilities-Medicaid Only clients Adopted interim daily rate: $409.98

Large State-Operated ICF/MR Facilities-Dual-eligible Medicaid/Medicare clients Adopted interim daily rate: $392.41

HHSC conducted a public hearing on March 30, 2009, to receive public comment on the proposed rates. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. The proposed rates and public hearing notice were published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1749). The adopted rates are to be effective September 1, 2008.

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1 Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Determination for State-Operated Facilities. The rate changes are being made based on actual and projected increases in costs to operate these facilities.

TRD-200901577
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: April 27, 2009

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Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract #529-08-0187-00002 to **Altarum Institute,** an entity with a principal place of business at 3520 Green Court, Suite 300, Ann Arbor, Michigan 48105. The contractor will provide Court-Ordered ("Children and Pregnant Women (CPW)") study (in compliance with *Frew, et al. v. Hawkins, et a1.)* of the CPW population which is comprised of Class Members who have health conditions/risks or high-risk pregnancies and have a need for case management services to prevent illness(es) or medical condition(s) to maintain function or slow further deterioration and who want case management services.

The total value of the contract with **Altarum Institute** is $758,644.25. The contract was executed on April 23, 2009 and will expire (in sixteen months) on or about August 23, 2010, **unless** extended or terminated sooner by the parties. **Altarum Institute** will produce numerous documents and reports during the term of the contract, with the final reporting due by (450 days after start) or on or about July 19, 2010.

TRD-200901589
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: April 28, 2009

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Texas Higher Education Coordinating Board

Request for Proposals: Campaign to Develop a College-Going Culture in Texas

PURPOSE: The three (3) major objectives of the Campaign to Develop a College-Going Culture in Texas are as follows:

To increase awareness of and build support for the Texas College and Career Readiness Standards;

To develop a commitment among stakeholders to create a college-going culture in Texas public schools that prepares all students for a post-secondary education; and

To clarify the processes of applying for admission and student financial aid.

The audiences of the Campaign include:

Business and community leaders at the state and local level;

Leaders, including faculty, of public and higher education institutions in Texas; and

Parents and students in the public school system.

AWARDING OF CONTRACT: Agreement/Contract will be negotiated with an entity that is selected from among the Applicants who submit a Proposal under a Request for Proposals (RFP) and that are determined through the evaluation process to have a successful Proposal. Submission of a Proposal confers no rights of Applicant to an award or to a subsequent Contract/Agreement, if there is one. The issuance of the RFP does not guarantee that a Contract/Agreement will ever be awarded. THECB reserves the right to amend the terms and provisions of the RFP, negotiate with Applicant, add, delete, or modify the Contract/Agreement and/or the terms of Proposal submitted, extend the deadline for submission of Proposal, or withdraw the RFP entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirement of the RFP.

INQUIRIES: All inquiries shall be directed to Laurie Frederick, Program Specialist, at Laurie.Frederick@thecb.state.tx.us.

Applicant must not discuss a Proposal with any other THECB employee unless authorized by the Point of Contact. Questions must be submitted in writing and received no later than May 15, 2009 at 5:00 p.m. CST. All responses by THECB must be in writing in order to be binding. Any information deemed by THECB to be important and of general interest or which modify requirements of the RFP shall be sent in the form of an addendum to all Applicants that have submitted a Notice of Intent or a Proposal.

CLOSING DATE: June 30, 2009.

TRD-200901592
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: April 28, 2009

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Texas Department of Housing and Community Affairs

Homelessness Prevention Rapid Re-Housing Program

Notice of Funding Availability (NOFA)

I. Background and Purpose of Homelessness Prevention Rapid Re-Housing Program funds.

The Homelessness Prevention Rapid Re-Housing Program (HPRP) funds, funded through the U.S. Department of Housing and Urban Development, are to be utilized for the provision of financial assistance, housing relocation and stabilization services, data collection and evaluation, and administrative costs. HPRP is designed to be part of a continuum of assistance to enable persons who are homeless or at risk of homelessness to maintain housing. The intent of HPRP is to transition program participants rapidly to stability, either through their own means or with public assistance, as appropriate. HPRP is not intended to provide long-term support for program participants (no more than eighteen (18) months). HPRP will fund homelessness prevention assistance to individuals and households who would otherwise become homeless--many due to the economic crisis--and to assistance to re-house persons rapidly who are homeless, as defined by §103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11303).

The Texas Department of Housing and Community Affairs (Department) has been notified that the HPRP award for Texas is $41,472,772. The funds will be awarded based on a competitive process and on the results of the review of applications submitted in response to this NOFA.

II. Notice of Funding Availability (NOFA).

The Department will accept applications in response to the HPRPR NOFA through May 22, 2009.

III. NOFA Qualifications.

Applicants responding to this NOFA must meet the qualifications of the NOFA and must be either a unit of general local government or a private non-profit organization with an existing status as a §501(c) tax-exempt entity as defined by the Internal Revenue Service.

IV. Proposed Contract Period.

The proposed contract period is August 2009 through July 2011.

V. Minimum and Maximum Amount of Request.

The minimum amount that can be requested is $250,000 and the maximum amount that can be requested is $1,000,000 per application.

VI. Application Deadline and Availability.

The Homelessness Prevention Rapid Re-Housing Program NOFA will be posted on the Department's website: http://www.tdhca.state.tx.us/recovery/detail-homelessness.htm and organizations on the Department's list serve will receive an e-mail notification that the NOFA is available on the Department's web-site as well as current CSBG and Emergency Shelter Grants Program subrecipients.

Deadline for Receipt: Friday, May 29, 2009 by 5:00 p.m. CST

Mailing Address:

Ms. Rita D. Gonzales-Garza, Project Manager

Community Services Section

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery: If you are hand delivering the application, contact J. Al Almaguer at (512) 475-3908 (Al.Almaguer@tdhca.state.tx.us) or Aurora Carvajal at (512) 475-1187 (a.carvaja@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

HPRP NOFA Application Workshop

May 7, 2009, 8:00 a.m. - 5:00 p.m. in Austin, Texas at The Commons Center, JJ Pickle Research Campus, 10100 Burnet Road (off Mopac/Loop 1, exit Braker), building #137. Persons do not need to register to attend workshop. Attendance is not mandatory and will not be a factor in awarding HPRP funds.

Questions. Questions pertaining to the content of the Homelessness Prevention Rapid Re-Housing Program NOFA may only be directed to Rita Gonzales-Garza at (512) 475-3905 (rita.garza@tdhca.state.tx.us) and Stuart Campbell at (512) 463-7961 (stuart.campbell@tdhca.state.tx.us).

TRD-200901582
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 28, 2009

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Houston-Galveston Area Council

Request for Proposals - Contract Financial Monitoring

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide financial monitoring services for the Gulf Coast Workforce system for the American Recovery and Reinvestment Act of 2009. The successful bidder or bidders will be offered a contract, beginning on or around June 16, 2009 through October 31, 2009. H-GAC may renew the contract for up to a full year depending on our need for additional monitoring services and a contractor's performance.

Prospective bidders may obtain a copy of the Request for Proposals online at http://www.theworksource.org or by contacting Carol Kimmick at (713) 627-3200 or by sending email to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon Central Daylight Time on Tuesday, May 19, 2009. Late proposals will not be accepted. There will be no exceptions.

TRD-200901603
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: April 29, 2009

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by COLONY SPECIALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Columbus, Ohio.

Application to change the name of AIG SUNAMERICA LIFE ASSURANCE COMPANY to SUNAMERICA ANNUITY AND LIFE ASSURANCE COMPANY, a foreign life company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200901616
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Filed: April 29, 2009

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Texas Lottery Commission

Instant Game Number 1196 "Bonus Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1196 is "BONUS BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1196 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1196.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY STACK SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $7,500 and $75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1196 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEYSTACK SYMBOL	WIN$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV

$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$7,500	75 HUND
$75,000	75 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $7,500 or $75,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1196), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1196-0000001-001.

K. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BREAK THE BANK" Instant Game No. 1196 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols within the same game, the player wins prize shown for that number. If a player reveals a "MONEY STACK" play symbol, the player wins prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No more than four matching non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

G. The MONEY STACK (auto win) play symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No YOUR NUMBER play symbol in one game will match a LUCKY NUMBER play symbol in the other game.

I. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of $1,000, $7,500 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1196. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1196 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,400,000	10.71
$10	1,600,000	9.38
$15	550,000	27.27
$20	150,000	100.00
$50	195,000	76.92
$100	37,500	400.00
$500	2,000	7,500.00
$1,000	375	40,000.00
$7,500	40	375,000.00
$75,000	21	714,285.71

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1196 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1196, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200901574
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 27, 2009

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North Central Texas Council of Governments

Request for Proposals to Develop a Regional Rideshare Application

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting written proposals from consultant firms to develop a regional internet-based rideshare software application for the Dallas-Fort Worth region. The application will allow commuters to locate and establish carpool and vanpool matches and determine the status of seating availability in existing pools. The application will link commuters located throughout the North Central Texas region. It will also assist regional transit agencies in their quest to match carpool and vanpool users. The rideshare application will be fully integrated into the existing NCTCOG Try Parking It website and will build upon exist-

ing application code to ensure a seamless connection to the Try Parking It website. Restrictions will be placed on the use of the existing code to activities directly related to the development of the rideshare application for NCTCOG. Engineering services are not anticipated for this effort.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, June 5, 2009, to Sonya Jackson, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200901621
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 29, 2009

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Public Utility Commission of Texas

Notice of Application for Approval of Code of Conduct and Organizational Structure

Notice is given to the public of the filing on April 3, 2009, with the Public Utility Commission of Texas (commission) of an application for approval of code of conduct and organizational structure as required by PURA §39.157. The filing is required prior to securing a Certificate of Convenience and Necessity for specific facilities.

Docket Title and Number: Application of Wind Energy Transmission Texas, LLC for Approval of its Code of Conduct and Organizational Structure, Docket Number 36856 before the Public Utility Commission of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 22, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36856.

TRD-200901622
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 29, 2009

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Notice of Application for Determination of 2008 System Restoration Costs

Notice is given to the public of an application for determination of system restoration costs filed pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §14.001 and Senate Bill 769.

Docket Style and Number: Application of Entergy Texas, Inc. for Determination of 2008 System Restoration Costs, Docket Number 36931.

The Application: On April 21, 2009, Entergy Texas, Inc. (ETI) filed with the Public Utility Commission of Texas (commission) an application for determination that system restoration costs of $577,506,566 following Hurricanes Ike and Gustav, incurred through February 28, 2009, plus certain estimates, were and are reasonable and necessary to enable ETI to restore electric service to its customers and ETI's electric utility infrastructure. Specifically, ETI requests a commission determination (1) that the incurred and estimated costs are eligible for recovery and securitization; (2) authorizing ETI's carrying cost rate; and (3) approving the manner in which the system restoration costs will be functionalized and allocated in a subsequent proceeding. ETI's application included witness testimonies in support of its application, a proposed protective order, and proposed notice.

The commission has jurisdiction over this application pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §14.001 and Senate Bill 769 (SB 769). SB 769 was passed by the Texas Legislature on April 7, 2009, and signed by the Governor. The purpose of SB 769 is to enable an electric utility to timely recover system restoration costs after a hurricane or similar natural disaster and to use securitization financing to recover the distribution-related costs and the Electric Reliability Council of Texas, Inc. Transmission Cost of Service mechanism to recover the transmission-related costs. SB 769 establishes a 150-day period to process this application. Accordingly, the 150-day period for this proceeding ends **September 18, 2009.**

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36931.

TRD-200901530
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2009

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 22, 2009, for an amendment to certificated service area for a service area exception within Grayson County, Texas.

Docket Style and Number: Application of Grayson-Collin Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity

for an Electric Service Area Exception within Grayson County. Docket Number 36932.

The Application: Grayson-Collin Electric Cooperative, Inc. (Grayson-Collin) filed an application for a service area boundary exception to allow Grayson-Collin to provide service to a specific customer located within the certificated service area of Oncor Electric Delivery Company, LLC (Oncor). The U.S. Army Corps of Engineers has requested that Grayson-Collin be authorized to provide retail electric service to the Denison Dam. Oncor has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 15, 2009 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36932.

TRD-200901597
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2009

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 21, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Zayo Bandwidth, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36929 before the Public Utility Commission of Texas.

Applicant intends to provide Ethernet services. Applicant's requested SPCOA geographic area includes the geographic area of Texas served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 13, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36929.

TRD-200901578
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2009

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 24, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of WIRESTAR, INC. for a Service Provider Certificate of Operating Authority, Docket Number 36934 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, T1-Private Line, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 13, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36934.

TRD-200901598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2009

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on April 28, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The applicant will file the LRIC study on or after May 8, 2009.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Operator Assistance - Collect and Third Number Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 36942.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36942. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36942.

TRD-200901599
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2009

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Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Wes-Tex Telephone Cooperative, Inc. (Wes-Tex Telephone) application filed with the Public Utility Commission of Texas (commission) on April 8, 2009, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Wes-Tex Telephone Cooperative, Inc. Statement of Intent of to Implement a Minor Rate Change Pursuant to Substantive Rule §26.171; Tariff Control Number 36896.

The Application: Wes-Tex Telephone filed an application to implement a minor rate change to the following services: 1-Party Exchange Access Line rates for residence and business customers; Key Trunk Hunting Exchange and PBX Trunk Exchange Access Line rates for business customers; and non-recurring rates for the Primary Service Ordering Charge, Subsequent Service Ordering Charge, Central Office Access Line Charge, Premises Visit Charge, and Returned Check Charge in its Member Services Tariff. The Cooperative also proposes to remove the 2-Party Exchange Access Line rates for residence and business customers as Wes-Tex has no subscribers for these obsolete services.

In its Long Distance Message Telecommunications Service Tariff (LDMTS), Wes-Tex proposes to increase the following Two-Point Service Charges: Operator Assisted, Station-to-Station Service, Person-to-Person Service and Other Services; and the local and intraLATA Directory Assistance Services. The Cooperative also proposes to eliminate the free three-call allowance for a single-line and subsequent call allowance for additional lines to Directory Assistance Service. In addition, Wes-Tex proposes to remove the obsolete Two-Point Service Charges for Operator Assisted, Fully Automated, Station-to-Station, Collect Calls and Billed to Third Number Calls that are no longer provided by the Cooperative's Directory Assistance and Operator Service Provider, AT&T Texas.

The proposed effective date for the proposed rate changes is July 31, 2009. The estimated annual revenue increase recognized by Wes-Tex Telephone is $25,163.28 or less than 5% of Wes-Tex Telephone's gross annual intrastate revenues. Wes-Tex Telephone has 2,682 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by July 1, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 1, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 36896.

TRD-200901531
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2009

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Request for Proposals for a Technical Writer to Revise the Agency Employee Handbook

PUC RFP No. 473-09-00307

Deadline for proposal submission: 5:00 p.m., Central Daylight Time, Friday, May 22, 2009.

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a technical writer to revise and update the Employee Handbook (the Handbook). The Handbook contains information for agency employees on a variety of topics including agency policies and procedures, state employee benefits, and federal employment protections.

The Handbook needs to be updated to reflect changes in state and federal laws, new agency policies and procedures, current agency organization, and changes to various forms. The PUCT seeks a writer who can organize, update, and index the Handbook.

Among the technical writer's duties will be reviewing the contents and organization of the Handbook; evaluating the Handbook's writing style, organization, and format in terms of readability and ease of use; communicating the evaluation to the Director of Human Resources; and drafting a revised Handbook that retains the subject matter in the current Handbook as well as additional topics provided by the Director of Human Resources.

The complete RFP is on the PUC website at: http://www.puc.state.tx.us/about/procurement/currentrfps.cfm.

To obtain a copy of the RFP, contact Chris Wood, Purchaser at (512) 936-7069; chris.wood@puc.state.tx.us; or PUCT, P.O. Box 13326, Austin, TX 78711-3326.

TRD-200901529
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2009

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WorkForce Solutions South Plains

Request for Proposal

The South Plains Regional Workforce Development Board (dba WorkForce Solutions South Plains) announces the issuance of a Request for Proposal (#RFP-2009-50-002-WFS-CC) to solicit proposals from qualified and eligible organizations for the management and operation of South Plains Workforce Center Services, Youth Services and Child Care Services. Proposing entities must submit proposals for the entire South Plains Regional Workforce Development area which consists of Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry and Yoakum counties. Proposals to serve less than the entire area will be deemed non-responsive. The selected provider will directly manage the primary functions of workforce services, client services and provider management for the South Plains Region. WorkForce Solutions South Plains expects to award one or more contracts.

All written inquiries and questions must be received at the above-referenced address not later than 5:00 p.m. (CDT) on Friday, May 22, 2009. Questions received after this time and date will not be considered. A mandatory pre-proposal conference will be held on May 26, 2009 at 1:30 p.m.

The submission deadline for proposals is June 19, 2009 at 5:00 p.m. The successful respondent(s) will be expected to begin performance of the contract on October 1, 2009. All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. WorkForce Solutions South Plains reserves the right to accept or reject any or all proposals submitted. WorkForce Solutions South Plains is under no legal or other obligation to issue an award on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits WorkForce Solutions South Plains to pay for any costs incurred prior to the award of a contract.

Parties interested in submitting a proposal may obtain information by contacting Maria Keenmon at (806) 744-1987 or Maria.Keenmon@sp-

workforce.org. A copy of the RFP may be downloaded from the WorkForce website at http://www.spworkforce.org or from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/.

WorkForce Solutions South Plains is an Equal Opportunity Employer/Program. Historically Underutilized Businesses (HUBs) are encouraged to apply. Auxiliary aid and services are available upon request to individuals with disabilities.

TRD-200901623
Maria Keenmon
Strategic Planner
WorkForce Solutions South Plains
Filed: April 29, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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 through the Internet. The address is: 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 subscription 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 ***Table of TAC Titles Affected***. The table 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 one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).