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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IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0947-GA

Requestor:

Dr. Tim F. Branaman, Chair

Texas State Board of Examiners of Psychologists

333 Guadalupe, Suite 2-450

Austin, Texas 78701

Re: Whether the use of the description "nationally certified school psychologist" may be regulated by the State Board of Examiners of Psychologists (RQ-0947-GA)

Briefs requested by April 4, 2011

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

TRD-201100969
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: March 9, 2011

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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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Chapter 354, Subchapter A, Division 10, Definitions, §354.1121, Definitions; and Division 24, Nurse Practitioner and Clinical Nurse Specialist Services, §354.1331, Benefits and Limitations, and §354.1332, Conditions for Participation. HHSC also is amending the title of Division 24 to include clinical nurse specialists.

Background and Justification

HHSC proposes to amend the nurse practitioner and clinical nurse specialist rules, the definitions related to these rules, and the title of Division 24. The current title of Division 24 is Certified Family Nurse Practitioner and Nurse Specialist Services. This title identifies two of the many types of nurse practitioners, but does not identify "clinical nurse specialists," who also are licensed practitioners. The amended title, Nurse Practitioner and Clinical Nurse Specialist Services, encompasses all types of nurse practitioners and clinical nurse specialists and corresponds to the terms used in the Texas Nursing Practice Act and the rules of the Texas Board of Nursing.

Additionally, two definitions are added; two redundant definitions are deleted; one definition is deleted for clarification; and amendments are proposed to update terms, remove obsolete language, and clarify language. These rule changes will reduce confusion for staff and auditors performing utilization review and monitoring for fraud and abuse. The definitions were reordered as appropriate.

Section-by-Section Summary

Amendments throughout §354.1121 substitute the terms: "advanced practice registered nurse (APRN)" for "advanced nurse practitioner," "Texas Board of Nursing" for "Board of Nurse Examiners for the State of Texas," "specialized" for "boat" (related to ambulance services), "Medicaid" for "Medical Assistance," and "Texas Health and Human Services Commission (HHSC)" for "department."

Amended §354.1121(1) updates the definition of "advanced practice registered nurse" to correspond to the definitions used by the Texas Board of Nursing (22 TAC §219.2, Definitions) and the Texas Medical Board (22 TAC §193.2, Definitions).

Amended §354.1121(5) removes the definition for "certified nurse-midwife (CNM)" because CNM qualifications and services are described in Division 16 of this subchapter.

Amended §354.1121(17) inserts a new definition for "institution for mental diseases (IMD)" by referencing the definition in the Texas Department of State Health Services' mental health rehabilitative services rule (25 TAC §419.453, Definitions).

Amended §354.1121(18) inserts an updated definition for "Medicaid program." The previous definition was for the outdated term "Medical Assistance Program."

Amended §354.1121(21) removes the definition for "nurse-midwifery" because this service is not a Medicaid benefit. The definition in this Medicaid rule could be confused with CNM services, which are a Medicaid benefit. CNM services are described in Division 16 of this subchapter.

Amended and renumbered §354.1121(27) inserts "electronic" to accommodate electronic prescriptions. It removes "doctor" and inserts "health care practitioner" to clarify that practitioners other than physicians and doctors may sign a prescription. It removes the phrase "for a product or service to be given an eligible recipient" because it is not needed. It reorders the rule by moving "verbal order subsequently countersigned by the practitioner" to the end of the rule. It inserts "or verified by the pharmacist" because the pharmacist has other methods to validate a prescription.

Amended §354.1121(38) deletes the definition of Title XIX home health agency" as unnecessary. "Home health agency" is defined in §354.1031, Medicaid Home Health Services, in Division 3 of this subchapter.

The current title of Division 24 is Certified Family Nurse Practitioner and Pediatric Nurse Practitioner. The proposed amendment changes the title to "Nurse Practitioner and Clinical Nurse Specialist Services." The amended title encompasses all types of nurse practitioners and clinical nurse specialists and corresponds to the terms used in the Texas Nursing Practice Act and the rules of the Texas Board of Nursing. Amendments throughout §354.1331 and §354.1332 include substitution of the terms "Board of Nursing" for "Texas Board of Nurse Examiners"; "Texas Health and Human Services Commission (HHSC)" for "department"; "advanced practice registered nurse (APRN)" for "advanced nurse practitioner"; "Medicaid" for "Medical Assistance"; and "division" for "subchapter."

Amended §354.1332(1) clarifies that an APRN licensed by another state's licensing authority can participate in Texas Medicaid only if the Texas Board of Nursing recognizes that state's licensing authority.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs. Ms. Rymal also has determined that the rules will not impact a local economy.

Small and Micro-Business Impact Analysis

Ms. Rymal also has determined that there will be no effect on small businesses or micro businesses to comply with the amended requirements, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local government.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the rules will be a clearer understanding of Medicaid rules related to advanced practice registered nurses and clinical nurse specialists.

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.

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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposed rules may be submitted to Garry Walsh, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3731; or by e-mail to garry.walsh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for April 18, 2011 from 10:00 a.m. to 11:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

DIVISION 10. DEFINITIONS

1 TAC §354.1121

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Human Resources Code §32.0312.

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

§354.1121. Definitions.

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

(1) Advanced practice registered nurse [~~practitioner~~]--A registered [~~professional~~] nurse authorized by the Texas Board of Nursing to practice[~~, currently licensed, credentialed, and recognized~~] as an advanced practice registered nurse. [~~practitioner, as defined by the Board of Nurse Examiners for the State of Texas in its "Rules and Regulations Relating to Professional Nurse Education, Licensure, and Practice."~~] The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(2) Ambulance service supplier--A person, firm, or institution approved for and participating in Medicare as an air, ground, or specialized [~~boat~~] ambulance service supplier or provider.

(3) Ambulatory surgical center--A distinct health care entity that operates exclusively for the purpose of providing certain surgical services to patients not requiring overnight inpatient hospital services. The center must meet the conditions for participation described in §354.1211 of this subchapter [~~as specified in §29.1301 of this title~~] (relating to Conditions for Participation) and other applicable state and federal requirements.

(4) Approved laboratory--A laboratory that is independent of a hospital or physician's office and that has been approved for and is participating in Medicare and only for the procedures certified to that laboratory under Medicare.

[~~(5) Certified nurse-midwife (CNM)--A licensed by the State Board of Nurse Examiners as an advanced nurse practitioner in midwifery and who is also certified as a nurse-midwife by the American College of Nurse-Midwives.~~]

(5) [~~(6)~~] Claim--A request for payment for authorized benefits on the applicable approved form meeting the established itemization requirements.

(6) [~~(7)~~] Day--With respect to inpatient hospital services, the time period of a day is counted for:

(A) hospital bed occupancy each midnight while under registration in a hospital as an inpatient;

(B) each hospital bed occupancy where admission and discharge occur on the same calendar day while under registration in a hospital as an inpatient.

(7) [~~(8)~~] Doctor--Doctor of chiropractic (chiropractor), doctor of optometry (optometrist), doctor of podiatry (podiatrist), or doctor of dentistry (doctor of dental surgery (DDS), doctor of medical dentistry (DMD), and doctor of dental medicine (DDM)).

(8) [~~(9)~~] Doctor of chiropractic, doctor of optometry, doctor of podiatry, and doctor of dentistry (DDS, DMD, or DDM)--A licensed doctor legally authorized to practice his specialty at the time and place the service is provided.

(9) [~~(10)~~] Eligible provider--An institution, facility, agency, person, partnership, corporation, or association approved for participation in the Texas Medicaid program [~~Medical Assistance Program~~] in accordance with terms of this chapter. "Eligible provider" also includes any person, firm, or institution approved for and participating in Part B Medicare as a supplier or provider of medical services or supplies, who is not otherwise designated as an eligible Title XIX provider, and who meets the requirements stipulated in this definition, except that such eligible provider shall be an eligible Title XIX provider only for Part B Medicare services or supplies and for the Title XIX payment of the deductible and coinsurance liabilities.

(10) [~~(11)~~] Eyeglasses--Eyewear dispensed and delivered that is medically necessary and prescribed by a doctor of optometry or physician, is professionally adjudged to be necessary and appropriate for the lens, age, and sex of the eligible recipient, and significantly improves visual acuity or impedes progression of visual problems. The term "eyeglasses" does not include artificial eyes or any item of eyewear for which benefits are not provided in the [~~department's~~] rules of the Texas Health and Human Services Commission (HHSC) regarding the Medicaid eyeglass program.

(11) [~~(12)~~] Eyeglass supplier--A person, firm, or institution that has entered into a written agreement with HHSC or its designee as an eyeglass supplier on a form approved by HHSC [~~the department~~]; provided that the benefits shall be available for eyeglass services and supplies dispensed by an eyeglass supplier only if the fitting, adjustment, and repair of the eyewear involved is performed by a physician, doctor of optometry, or an optician; and provided that an eyeglass supplier is an eligible provider under this program. Such suppliers must accept the benefits paid as stipulated by HHSC [~~the department~~] as payment in full for the service and supplies involved, except as otherwise provided.

(12) [~~(13)~~] Family planning agency--A facility or institution that has been determined by HHSC or its designee [~~the health insuring agent~~] to qualify as a family planning agency under standards of participation established by HHSC [~~the department~~], including any amendment of such standards of participation authorized by HHSC [~~hereafter submitted to the health insuring agent and by the department and which is mutually approved by the health insuring agent and the department~~]. Family planning agencies shall accept as payment in full the amount paid in accordance with the benefits as stipulated by HHSC [~~the department~~].

(13) [~~(14)~~] Health insuring agency--An organization legally operating within the state that pays for the cost of certain medical services available under the Title XIX state plan to eligible recipients in exchange for premiums paid by HHSC [~~the Department of Human Services~~] and which assumes an underwriting risk.

(14) [~~(15)~~] Hospital--Any institution licensed as a hospital by the appropriate licensing authority but which is not an institution for tuberculosis, a mental institution, a health resort, nursing home, rest home, or any other institution primarily providing convalescent or custodial care or which is otherwise excluded under this chapter.

(15) [~~(16)~~] Illness--A bodily disorder, bodily injury, disease, or mental disease.

(16) [~~(17)~~] Inpatient--A person registered and assigned a medical record number by a hospital for bed occupancy in that hospital.

(17) Institution for mental diseases (IMD)--As defined in 25 TAC §419.453(17) (relating to Definitions).

(18) Medicaid program [~~Medical Assistance Program~~]--The Texas Medical Assistance Program, a joint federal and state program provided for in Chapter 32, Texas Human Resources Code, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. [~~The program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended.~~]

(19) Mental disease or disorder--Any condition classified as a neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(20) Nonmedical public institution--An institution or facility that is either a unit of, or under the administrative control of a state, federal, or local government and that is not approved for participation in the Medicaid program [~~Medical Assistance Program~~].

[~~(21) Nurse-midwifery--For purposes of coverage and reimbursement under the Medical Assistance program, nurse-midwifery means the management of the care of mothers and newborns throughout the maternity cycle, including the prepartum period, labor, birth, and the immediate postpartum period, not to exceed six weeks.~~]

(21) [~~(22)~~] Out-of-state hospital--A hospital located outside of the State of Texas that participates as a general or acute care hospital or both under Medicare or Title XIX, or both. Examples of institutions that are excluded are institutions primarily for mental disease, pulmonary care, or tuberculosis, a health resort, a nursing home, a rest home, or any other institution primarily providing convalescent or custodial care or that is otherwise excluded under this chapter.

(22) [~~(23)~~] Outpatient--A person registered by a hospital for outpatient services but not as an inpatient.

(23) [~~(24)~~] Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(24) [~~(25)~~] Physical therapist--A graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (or one of the previously recognized accreditation bodies), and licensed by the state in which the services are performed.

(25) [~~(26)~~] Physical therapist assistant--A person licensed by the appropriate state licensure board as a physical therapist assistant and who provides physical therapy under the direction of a licensed physical therapist.

(26) [~~(27)~~] Physical therapy--Restorative services prescribed by a physician and provided to a recipient by a qualified physical therapist. It includes any necessary supplies and equipment.

(27) [~~(28)~~] Prescription--A signed written or electronic order [~~or a countersigned oral order~~] by a physician or other healthcare practitioner acting within the scope of his or her licensure. This includes a verbal order subsequently countersigned by the practitioner or verified by the pharmacist. [~~doctor for a product or service to be given an eligible recipient.~~]

(28) [~~(29)~~] Psychologist--A person who is licensed to practice as a psychologist in the state in which the service is performed.

(29) [~~(30)~~] Recipient month--A calendar month of continuous eligibility for one individual under the Medicaid program [~~Medical Assistance Program~~]. Each month covers eligibility for only one eligible recipient. Multiple recipient months may cover eligibility for one or more eligible recipients or eligibility for the same individual if prior months are involved. Additional months of recipient eligibility may occur due to:

(A) certification of eligibility for up to three months prior to date of application;

(B) eligibility for those individuals who are certified to be eligible recipients after a first of the month;

(C) eligibility certified retroactively;

(D) certification of four months post eligibility for certain individuals in the non-Medicare related aid to families with dependent children coverage group; or

(E) appropriately identified error adjustments.

(30) [~~(31)~~] Respiratory care practitioner--A person certified to practice respiratory care as defined in the Occupations Code, Chapter 604, relating to Respiratory Care Practitioners [~~Texas Civil Statutes, Article 4512L~~].

(31) [~~(32)~~] Semiprivate room--A two-bed, three-bed, or four-bed accommodation.

(32) [~~(33)~~] State fiscal year--The 12-month period beginning September 1 and ending August 31.

(33) [~~(34)~~] State plan--The plan for administration of the Medicaid program [~~Medical Assistance Program~~] which is approved by the secretary of health, education, and welfare in accordance with the provisions of Title XIX of the Social Security Act, as amended.

(34) [~~(35)~~] Therapeutic optometrist--A person certified by the Texas Optometry Board to practice therapeutic optometry in accordance with the Texas Optometry Act. References in this chapter to optometrists include therapeutic optometrists.

(35) [~~(36)~~] Third-party billing vendor--A vendor that submits claims to HHSC, or its designee, for reimbursement on behalf of a provider of medical services under the Medicaid [~~medical assistance~~] program.

(36) [~~(37)~~] Third-party liability--The resources that an eligible recipient may have which serve as a source of payment for services provided under the Medicaid program [~~Medical Assistance Program~~].

~~[(38) Title XIX home health agency--An agency or organization approved as a home health agency under Medicare and which has been designated by the department as a Title XIX home health agency.]~~

(37) [~~(39)~~] Title XIX hospital--A hospital that is participating as a hospital under Medicare, that has in effect a utilization review plan approved by HHSC [~~the department~~] applicable to all eligible recipients to whom it provides services or supplies, and has been designated by HHSC [~~the department~~] as a Title XIX hospital or a hospital not meeting all of the requirements listed in this definition but which provides services or supplies for which benefits are provided under Medicare, the Social Security Act, §1814(d), or would have been provided under such section had the recipients to whom the services or supplies are provided been eligible for and enrolled under Part A of Medicare, to the extent of such services and supplies only, and then only if such hospital has been designated by HHSC [~~the department~~] as a Title XIX emergency care only hospital, or has been approved by HHSC [~~the department~~] to provide emergency hospital services and agrees that the reasonable cost of such services or supplies, as defined in the Social Security Act, §1902(a)(13), will be such hospital's total charge for such services and supplies.

(38) [~~(40)~~] Title XIX spell of illness--With respect to inpatient hospital services, spell of illness is a continuous period of hospital confinement. Successive periods of hospital confinement are considered to be continuous unless the last date of discharge and the date of readmission are separated by at least 60 consecutive days.

(39) [~~(41)~~] Utilization review--The methods and procedures related to the review of utilization of covered care and services with respect to medical necessity and to safeguard against inappropriate utilization of care and services.

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 March 7, 2011.

TRD-201100917
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-6900

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DIVISION 24. NURSE PRACTITIONER AND CLINICAL NURSE SPECIALIST SERVICES

1 TAC §354.1331, §354.1332

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Human Resources Code §32.0312.

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

§354.1331. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC) [~~department~~] or its designee, services performed by advanced practice registered nurses (APRNs) [~~nurse practitioners~~] are covered if the services:

(1) are within the scope of practice for APRNs [~~advanced nurse practitioners~~], as defined by state law;

(2) are consistent with rules and regulations promulgated by the Texas Board of Nursing [~~State Board of Nurse Examiners~~] or another state's [~~other appropriate state~~] licensing authority as recognized by the Texas Board of Nursing; and

(3) would be covered by the Medicaid program [~~Texas Medical Assistance Program~~] if provided by a licensed physician (MD or DO).

(b) To be payable, services must be reasonable and medically necessary as determined by HHSC [~~the department~~] or its designee.

(c) APRNs [~~Advanced nurse practitioners~~] who are employed or remunerated by a physician, hospital, facility, or other provider must not bill the Medicaid program [~~Texas Medical Assistance Program~~] directly for their services if that billing would result in duplicate payment for the same services. If the services are coverable and reimbursable by the Medicaid program, payment may be made to the physician, hospital, or other provider (if the provider is approved for participation in the Medicaid program [~~Texas Medical Assistance Program~~]) who employs or reimburses the APRN [~~advanced nurse practitioners~~]. The basis and amount of Medicaid reimbursement depend on the services actually

provided, who provided the services, and the reimbursement methodology determined by the Medicaid program [~~Texas Medical Assistance Program~~] as appropriate for the services and the providers involved.

(d) The policies and procedures in this division [~~subchapter~~] do not apply to certified registered nurse anesthetists (CRNAs) and certified nurse-midwives (CNMs). Coverage of services provided by CRNAs [~~certified nurse-midwives~~] and CNMs [~~certified registered nurse anesthetists~~] are described in Divisions 16 and 21 of this subchapter [~~Subchapters Q and V of this chapter~~] (relating to Certified Nurse-Midwife Services and Certified Registered Nurse Anesthetists' Services).

§354.1332. Conditions for Participation.

To be a provider of Medicaid covered services, an advanced practice registered nurse (APRN) [~~practitioner~~] must:

(1) be licensed by the Texas Board of Nursing [~~State Board of Nurse Examiners~~] or another state's [~~other appropriate state~~] licensing authority as recognized by the Texas Board of Nursing;

(2) be recognized by the licensing authority as an APRN [~~advanced nurse practitioner~~];

(3) comply with all applicable federal and state laws and regulations governing the services provided;

(4) be enrolled and approved for participation in the Medicaid program [~~Texas Medical Assistance Program~~];

(5) sign a written provider agreement with the Texas Health and Human Services Commission (HHSC) [~~department~~] or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Medicaid program [~~Texas Medical Assistance Program~~], including regulations, rules, handbooks, standards, and guidelines published by HHSC [~~the department~~] or its designee; and

(7) bill for services covered by the Medicaid program [~~Texas Medical Assistance Program~~] in the manner and format prescribed by HHSC [~~the department~~] or its designee.

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 March 7, 2011.

TRD-201100920
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 17, 2011
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 W. RED PALM MITE QUARANTINE

4 TAC §19.601, §19.602

The Texas Department of Agriculture (the department) proposes amendments to §19.601 and §19.602 in order to expand the quarantined area and to update the list of quarantine articles for the Red Palm Mite Quarantine. This quarantine listed four counties in the State of Florida as the quarantined area and over 48 species of plants, primarily palm species, as quarantined articles. However, the recent information received from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry (DPI) indicated that eight Florida counties are infested with the red palm mite and the mite host list has expanded to over 62 plant species. The proposed amendments add Collier, Lee, Martin and St. Lucie counties to the list of quarantined area and also add Coyure, ruffle or spine palm; Alexander or king palm; Gomuti or sugar palm; giant windowpane palm; Kentia or sentry palm; Pindo or jelly palm; Miraguama palm; Talipot palm; Florida royal palm; silver pimento palm; Florida thatch palm; Manila palm; *Washingtonia* species; and *Heliconia* species to the list of the red palm mite host plants. Amendments also correct misspelled scientific names and arrange plant species in logical order. The amended sections were adopted on an emergency basis on February 14, 2011, and were published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1409). The amendments take necessary steps to prevent man-made introduction of the red palm mite from counties newly recognized as infested and from plant species recently designated as hosts of this mite.

The department believes it is necessary to take this action to prevent man-made introduction of the red palm mite into Texas. The palm nursery industry, landscapers, homeowners and others who use palms are in peril because without the amendments, chances of introduction of this mite into Texas increase significantly. The mite is not known to occur in Texas and it poses a serious threat to the state's palm nurseries and to residential properties, shopping malls, businesses, and other areas where palms are used for landscaping. Heavy infestation of this mite can cause significant loss of the foliage. Updating the red palm mite quarantined area and the mite host list would ensure that shipments impacted by the proposed amendments would also receive DPI's mite-free certification, thereby reducing threat of this pest introduction into Texas.

Amended §19.601 adds Collier, Lee, Martin and St. Lucie counties of Florida to the quarantined area. Amended §19.602 adds over 14 species of plants, mostly palm species, to the list of quarantined articles.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the amended sections, as proposed.

Dr. Nilakhe also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be to prevent introduction of the red palm mite into Texas from Florida counties previously unknown as infested or from plant species previously unrecognized as hosts of the mite. The treatment cost to control the mites will be borne by Florida nurseries shipping the mite host plants, primarily palms, to Texas. In addition to the red palm mite, Florida palms also are damaged by other mite species, and application of treatments to control these mites is commonly practiced. Consequently, the cost to control the red palm mite would be reduced significantly since some of these treatments also would control the red palm mite.

DPI's cost for inspection and issuance of a phytosanitary certificate will be borne by the nurseries. DPI does not charge a fee to enter into a compliance agreement with a nursery/shipper for issuance of a stamp; however, it charges $50 and the mileage cost for issuance of a phytosanitary certificate. A nursery may consider this cost as an overhead, or may recoup it by adding to the relevant shipment, by distributing over all the shipments, or by some other means. If a Florida nursery opts to recoup the certification cost, fewer than 100 Texas small businesses and micro-businesses which import Florida palms might experience a slight increase in the palm prices. However, it is not possible to quantify such an increase because of different size of nurseries, different volume of shipments, various species and sizes of palms shipped, price variation between palm species, nursery-specific pest management practices employed, nursery-specific management decisions, etc. If a nursery opts to add the phytosanitary certificate cost such as $75 to a small shipment, such as five palm plants, it would have a greater negative economic impact on micro-businesses than small businesses. Furthermore, statistics on small versus large shipment of palms is not available.

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 amendments are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine against out-of-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to 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.

§19.601. Quarantined Areas.

The quarantined areas are:

(1) Broward, Collier, Dade, Lee, Martin, Monroe, [~~and~~] Palm Beach, and St. Lucie counties in the State of Florida; and

(2) any other area infested with the red palm mite.

§19.602. Quarantined Articles.

(a) The quarantined pest is a quarantined article.

(b) The following articles are quarantined:

Figure: 4 TAC §19.602(b)

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 March 4, 2011.

TRD-201100898
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.802

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 5, Subchapter H, §5.802, concerning Local Operators for the Section 8 Housing Choice Voucher Program. The purpose of the proposed new section is to identify a process for potential expansion of the Department's Section 8 program to additional areas of the state and outlines procedures to renew existing Local Operators (LOs) and procure new LOs. In addition, the proposed new section clarifies the roles and duties of the LOs for the Section 8 program.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

Mr. Gerber 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 enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

The public comment period will be held from March 18, 2011 to April 18, 2011 to receive input on this proposed new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MONDAY, APRIL 18, 2011.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects no other code, article or statute.

§5.802. Local Operators for the Section 8 Housing Choice Voucher Program.

(a) Purpose. This chapter clarifies the roles and duties of the Local Operators (LO) for Housing Choice Vouchers (Section 8) administered by the Texas Department of Housing and Community Affairs (the Department); identifies a process for potential expansion of the Department's Housing Choice Voucher program to additional areas of the state; and outlines the procedures for the Department to procure new LOs and renew existing LOs.

(b) Definitions.

(1) Applicant--A Person who has submitted an Application for Department funds or other assistance.

(2) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(3) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable Notice of Funding Availability (NOFA).

(4) Application Deficiency--A deficiency or inconsistency, which in the Department's reasonable judgment, may be cured by supplemental information or explanation that will not necessitate a substantial reassessment or re-evaluation of the Application.

(5) Board--The governing board of the Texas Department of Housing and Community Affairs.

(6) Contract--The executed written agreement between the Department and an Administrator performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(7) Department--The Texas Department of Housing and Community Affairs.

(8) Effective Date--The date on which all applicable parties have signed a Contract.

(9) Executive Director--Executive Director of the Texas Department of Housing and Community Affairs.

(10) HUD--U.S. Department of Housing and Urban Development.

(11) Local government--A county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394 of the Texas Local Government Code, or a combination of those entities. (§2306.004).

(12) Local Operators (LOs)--LOs are the local administrators who perform unit inspections, provide client processing and perform other administrative duties on the Department's behalf as Housing Choice Vouchers are issued and maintained in the local communities served by the Department's Housing Choice Voucher Program.

(13) Material Deficiency--Any individual Deficiency or group of Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of a LO Application or eligibility for LO Renewal or which, are repeated and pervasive that they indicate a failure by the LO to submit a substantively complete and accurate Application.

(14) NOFA--Notice of Funding Availability, published in the Office of the Secretary of State's *Texas Register* Publication.

(15) Nonprofit Organization--A public or private organization that:

(A) has evidence of a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3) of the Internal Revenue Code of 1986, a charitable, nonprofit corporation, or §501(c)(4) of the Internal Revenue Code of 1986, a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or a current group exemption letter from the IRS that is dated 1986 or later, that reflects the Applicant classified as a subordinate of a central non-profit organization under the Internal Revenue Code. The group exemption letter must specifically list the Applicant; and

(B) a private nonprofit organization's pending Application for §501(c)(3) or (4) of the Internal Revenue Code of 1986, status cannot be used to comply with the tax status requirement.

(16) Open Application Cycle--A defined period during which Applications may be submitted according to a published NOFA and which will be reviewed on a first come-first served basis until all funds available are committed or until the NOFA is closed, whichever is earlier.

(17) Owner--The Person who owns a unit for which a Section 8 Housing Choice Voucher is being considered or being used.

(18) Program--The Section 8 Housing Choice Voucher Program operated by the Department.

(19) Program Noncompliance--LOs of the Department's Section 8 program will be in Program Noncompliance if they do not meet the performance requirements or the LO eligibility requirements.

(c) Performance Requirements. The duties and expectations of the LO include the following and will be included in the LO contract. LO must:

(1) follow and comply with HUD's rules and regulations, including the U.S. Housing Act of 1937, the Annual Contributions Contract between the Department and HUD, the Housing Assistance Program contract between the Department and the owner of the unit occupied by an assisted family, as well as the Department's Administrative Plan and other applicable laws covering the Program;

(2) designate a specific contact to serve as a liaison with the Department;

(3) disseminate to Housing Choice Voucher recipients information concerning the availability and nature of housing assistance for lower-income families;

(4) make public invitations to Owners to make dwelling units available for leasing to eligible families;

(5) assist in receiving and reviewing applications from the public for participation in the program;

(6) assist in verifying program eligibility and selecting eligible families for participation according to Departmental rules and policies;

(7) assist in the issuance of Housing Choice Vouchers to selected eligible families and provide the family with necessary information regarding the program in accordance with 24 CFR §982.301;

(8) determine each eligible family's unit size requirements in accordance with Subpart K of 24 CFR Part 982;

(9) assist in determining the amount of total tenant payment and housing assistance payment, including calculation of allowances for utilities and other services under 24 CFR §982.505;

(10) certify rent reasonableness under 24 CFR §982.507;

(11) assist in facilitation of the owner's execution of the Housing Choice Voucher Contract in a form prescribed by HUD under 24 CFR §982.451;

(12) annually, assist in re-determination of families eligibility and amount of housing assistance payment in accordable with HUD established schedules and under 24 CFR §982.516, and submit redetermination information to the Department within ninety (90) to one-hundred-twenty (120) days of request;

(13) perform any necessary Housing Quality Standard inspections and notify Owners and families of property inspection determinations;

(14) perform any necessary Housing Quality Standard inspections for new admissions within sixty (60) days, or within one-hundred-twenty (120) days with Department approval of sixty (60) day extension;

(15) assist in coordination of portability requests from housing choice voucher families in accordance with Department policies;

(16) assist in processing changes in income and changes in household requests in accordance with Department policies;

(17) provide for prompt and timely lease up of vouchers when released by the Department or when existing vouchers become available through clients exiting the Program;

(18) maintain confidential client files in a manner that protects the privacy of each client and to maintain the same for future reference;

(19) store physical client files in a secure space in a manner that ensures confidentiality and in accordance with LO policies and procedures;

(20) add, based on availability, housing choice vouchers to the LO service area; and

(21) perform such other functions as directed by the Department.

(d) Eligibility of Local Operators.

(1) Eligibility Criteria for Applicants and Contract Renewals. New applicants for LO designation and currently designated LOs wishing to renew their contract must meet the following eligibility criteria:

(A) Organizations or entities eligible to be a LO of the Department's Housing Choice Voucher Program are:

(i) Nonprofit organizations;

(ii) Local Units of Government;

(iii) For-profit organizations;

(iv) Public Housing Authorities (PHA's); or

(v) Other eligible entities.

(B) Eligible organizations must have a publicly accessible confidential meeting space available to meet with Housing Choice Voucher families.

(C) Eligible organizations must have access to the internet, electronic mail, and a telephone for communication with the Department.

(2) Ineligibility Criteria for LOs. The following conditions will cause a new Applicant for LO designation or a currently designated LO wishing to renew their contract, to be ineligible:

(A) Program Noncompliance--Each Application and Contract Renewal will be reviewed for Program Noncompliance. Applications and contract renewals found in Program Noncompliance or otherwise violating this chapter at the time of Application and prior to Contract execution are ineligible for funding and will be terminated without being processed as a material deficiency.

(B) Failure to comply with federal and state law and/or failure to comply with the terms outlined in the LO contract; or refusal by the LO to assist in issuing housing choice vouchers in a timely manner and/or unwillingness to add vouchers to the LO service area may result in the termination of a LO contract.

(C) The Applicant has failed to perform the performance requirements outlined in subsection (c) of this section.

(D) The Applicant is an Administrator of a previously funded Contract for which Department funds have been partially or fully de-obligated due to failure to meet contractual obligations during the 12 months prior to the Application submission date.

(E) The Applicant has failed to submit or is delinquent in a response to provide an explanation, or evidence of corrective action as a result of a technical assistance visit by the Department.

(F) The Applicant has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the "List of Parties Excluded from Procurement of Non-procurement Programs" or has otherwise been debarred by HUD or the Department.

(G) The Applicant has violated the state's revolving door policy.

(H) The Applicant has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the Application deadline.

(I) The Applicant at the time of Application submission is:

(i) subject to an enforcement or disciplinary action under state or federal securities law or by the Financial Industry Regulatory Authority (FINRA) is subject to a federal tax lien; or

(ii) is the subject of an enforcement proceeding with any governmental entity.

(e) Local Operator Contract Execution and Renewal.

(1) Upon Board approval of a new LO, the Department's Executive Director and the LO shall enter into and execute an agreement for the administration of the Housing Choice Voucher program. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications, amendments or extensions to the contract.

(2) Contracts will be for an initial one year period with an automatic renewal in one year increments for a period not to exceed four (4) additional years conditioned on maintaining compliance with the eligibility criteria in subsection (d) of this section and having performed according to the performance requirements outlined in subsection (c) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the contract with the LO will be renewed.

(3) LOs in an existing contract will, upon expiration of the current contract, be eligible to execute a contract under paragraph (2) of this subsection so long as they are maintaining compliance with the eligibility criteria in subsection (d) of this section and have performed according to the performance requirements outlined in subsection (c) of this section. If the LO meets these requirements and is not in Program Noncompliance with the Department, the new contract described in paragraph (2) of this subsection will be executed.

(f) New Local Operator Application Procedures and Requirements.

(1) If a LO has terminated its contract with the Department or chosen not to renew a contract with the Department, and the Department chooses to find a replacement LO to continue providing ser-

vices to existing clients in the geographic area served by the prior LO, the Department will release a Notice of Funding Availability (NOFA) specifying the defined geographic area requiring continued service, information on the volume and geographic locations of the existing pool of voucher holders, and the LO requirements for operating the program if selected.

(2) The Department will develop and publish the NOFA and Application materials on its website. Applicants must verify and ensure the accuracy, sufficiency and receipt of all submissions to the Department.

(3) The Department reserves the right to request supplemental information or explanation from the Applicant in order to cure an Applicant deficiency.

(4) Applications must be submitted within the Application Acceptance Period as detailed in the NOFA.

(5) Evaluative criteria and any other Application or contractual requirements will be specified in the NOFA. Applications that do not meet minimum threshold criteria will not be considered for LO designation.

(g) Expansion of Section 8 service area. At least once each year, no later than March 31st, the Department will evaluate the availability of voucher funding and the current usage of existing vouchers, and determine whether an announcement of funding availability to expand vouchers outside of the current geographic areas served is appropriate. If deemed appropriate, a Notice of Funding Availability will be released specifying eligible geographic areas, evaluative criteria, any restrictions on voucher populations and LO requirements for operating the program if selected.

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 March 7, 2011.

TRD-201100904
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 475-3916

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CHAPTER 53. HOME PROGRAM RULE
SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

10 TAC §53.31

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 53, Subchapter C, §53.31, concerning Homeowner Rehabilitation Assistance (HRA) Program Requirements. The amendments are proposed to clarify the program requirements for refinancing existing mortgages within the Homeowner Rehabilitation Assistance (HRA) Program Activity including establishing a maximum refinancing amount and to differentiate the terms of refinancing HOME funds as compared to other Project funds.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Gerber has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The proposed amendments will not impact local employment.

The public comment period will be held between March 18, 2011 to April 18, 2011 to receive input on these amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-0220. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 18, 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, §2306.1091(b), which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments affect no other code, article or statute.

§53.31. Homeowner Rehabilitation Assistance (HRA) Program Requirements.

(a) Eligible activities are limited to:

(1) The Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of an MHU is not an eligible activity;

(2) The New Construction of site-built housing on the same site to replace an existing owner-occupied Manufactured Housing Unit (MHU);

(3) For only the purposes of relocating the existing housing out of the floodplain, the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site;

(4) If housing unit is uninhabitable as a result of disaster or condemnation by local government, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification; or

(5) If allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(d) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien if the loan has an outstanding balance that is less than the investment of HOME funds and any of the following are true:

(1) A federal affordability period is required; or

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(f) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(g) The total Project costs are inclusive of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), and Match funds for Project costs, and are limited to:

(1) Reconstruction and New Construction of site-built housing: The lesser of $73.00 per square foot or $80,000 or for Households of 6 or more Persons the lesser of $73.00 per square foot or $85,000;

(2) Replacement with an MHU: $65,000;

(3) Rehabilitation that is not Reconstruction: $30,000; and

(4) Refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to $35,000. To qualify, a Household's current total housing payment must be greater than 30% of their monthly gross income or their total monthly recurring debt payments must be greater than 45% of their gross monthly income. [~~the amount determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% and no greater than 30% of the Household's gross monthly income based on a thirty (30) year amortization schedule. Refinancing is not eligible for an Activity involving relocation under subsection (a)(3) of this section.~~]

(h) In addition to the Project costs allowable under subsection (g) of this section, up to $5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(i) Project soft costs are limited to:

(1) Reconstruction or New Construction: no more than $7,000 per housing unit;

(2) Replacement with an MHU: no more than $3,500 per housing unit;

(3) Rehabilitation that is not Reconstruction: $5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) Third-party Project soft costs related to loan closing requirements, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Activity or Project.

(j) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(k) In the following instances, the assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on an another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (b) of this section; and

[~~(4) Any Project Activity that includes any amount of refinancing of existing debt; and~~]

(4) [~~(5)~~] Any Project Activity that requires a federal affordability period.

(l) For any Project Activity involving refinancing described in subsection (g)(4) of this section, the HOME funds used for refinancing shall be structured as a fully amortizing, repayable loan at 0% interest and the loan term calculated by setting the total estimated housing payment equal to 25% of the Household's gross monthly income. Any other Project costs, excluding soft costs, shall be structured as a deferred forgivable loan with an affordability term consistent with the Figure: 10 TAC §53.31(m).

(m) [~~(l)~~] In all other instances not described in subsection (k) of this section and Project costs, exclusive of Project soft costs and costs related to refinancing an existing mortgage, described in subsection (l) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on the Household's AMFI as reflected in Figure: 10 TAC §53.31(m) [~~(l)~~].

Figure: 10 TAC §53.31(m)

[~~Figure: 10 TAC §53.31(l)~~]

(n) [~~(m)~~] In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan or grant agreement will cease and the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(o) [~~(n)~~] In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(p) [~~(o)~~] In the event that a federal affordability period is not required, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

(q) [~~(p)~~] For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

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 March 7, 2011.

TRD-201100903
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

10 TAC §60.202

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 60, Subchapter B, §60.202, concerning Accessibility Requirements. The proposed amendments change the definition of a multifamily housing project to include single family projects.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Gerber has also determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit anticipated will be to permit single family homes and units to be in a multifamily housing project, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The proposed amendments will not impact local employment.

The public comment period will be March 11, 2011 through April 7, 2011. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 7, 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to amend, repeal and adopt rules governing the administration of the Department and its programs.

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

§60.202. Definitions.

The following terms are used for purposes of this subchapter:

(1) Accessible route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of an applicable accessibility standard. In cases of rehabilitation, an accessible route is not required to serve units that are occupied by persons with hearing or vision impairments. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Accessible Route)*

(2) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Alteration)*

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §§100.201, 202(d))*

(4) Federal financial assistance--Any assistance provided or otherwise made available by the department through any grant, loan, contract or any other arrangement, in the form of:

(A) Funds;

(B) Services of personnel; or

(C) Real or personal property or any interest in or use of such property, including transfers or leases of the property for less than fair market value or for reduced consideration. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Federal Financial Assistance)*

(5) Multifamily housing project--A project that includes five or more dwelling units. A project may consist of five single family homes or a single building with five units. [~~It does not include a single family development.~~] A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application for federal financial assistance, or which are treated as a whole for processing purposes, whether or not located on a common site. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of multifamily housing project and definition of project; TCAP Questions and Answers: §504 of the Rehabilitation Act of 1973) 24 CFR Part 8)* [~~*(Source: 24 CFR Definitions. Definition of multifamily housing project and definition of project. ADAPT v. Philadelphia Housing Authority, 2000 U.S. Dist. LEXIS 5380 (E.D. PA 2000))*~~]

(6) Recipient--Includes a subrecipient and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with recipients to own or operate a

program or service. *(Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of recipient)*

(7) Replacement cost--The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, nondwelling facilities or administrative costs for project development activities. *(Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of replacement cost)*

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 March 7, 2011.

TRD-201100901
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 475-3916

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SUBCHAPTER C. ADMINISTRATIVE PENALTIES

10 TAC §§60.301 - 60.309

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 60, Subchapter C, §§60.301 - 60.309, concerning Administrative Penalties. The proposed repeal of these sections allows for new sections to ensure compliance with all statutory requirements, enable streamlining of processes, improve the equity of penalty amounts, and add a debarment process to this rule.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed repeal of these sections is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed repeal.

Mr. Gerber 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 proposed repeals will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal of these sections as proposed. The proposed repeal of these sections will not impact local employment.

The public comment period will be March 11, 2011 through April 7, 2011. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 7, 2011.

The repeal of these sections is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to amend, repeal and adopt rules governing the administration of the Department and its programs.

No other statutes, article, or codes are affected by this proposed repeal.

§60.301. Purpose.

§60.302. Definitions.

§60.303. Standards of Conduct.

§60.304. Violations of Standards and Rules.

§60.305. Investigation of Complaints.

§60.306. Informal Conference.

§60.307. Administrative Penalty.

§60.308. Administrative Hearing Process.

§60.309. Penalty Table.

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 March 7, 2011.

TRD-201100900
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 475-3916

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10 TAC §§60.301 - 60.309

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 60, Subchapter C, §§60.301 - 60.309, concerning Administrative Penalties. The proposed new sections ensure compliance with all statutory requirements, enable streamlining of processes, improve the equity of penalty amounts, and add a debarment process to this rule.

Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new sections.

Mr. Gerber has also determined that for each year of the first five-year period, the public benefit anticipated as a result of enforcing the proposed new sections will be to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. The proposed new sections will not impact local employment.

The public comment period will be March 11, 2011 through April 7, 2011. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments,

P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 7, 2011.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to amend, repeal and adopt rules governing the administration of the Department and its programs.

No other statutes, article, or codes are affected by the proposed new sections.

§60.301. Definitions.

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

(1) Responsible Person or Responsible Persons--Person or persons, whether a natural person or otherwise, such as a corporation, partnership, limited partnership, or trust, or their successors in interest or assigns, that have received or will receive funds or other financial assistance administered or awarded by the Department and/or is legally responsible for the administration of such assistance in accordance with the terms of a written agreement with the Department and/or subject to the rules of the Department and each person capable of controlling or directing the policies and activities of such a person or persons.

(2) Administrative Penalties Committee ("Committee")--A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no more than nine (9). Representation from Legal Services and Compliance and Asset Oversight shall be *ex officio* and non-voting. Legal Services will designate a person to serve as Secretary to the Committee, who shall not be a member of the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.

§60.302. Initiation of the Process to Assess an Administrative Penalty.

(a) The Compliance and Asset Oversight Division will refer uncorrected compliance issues to the Committee by following Department Standard Operating Procedures. Issues will not be referred until a written notice of noncompliance has been provided to the owner of a property and, despite written notice and reasonable opportunity to correct, the Department has no documented basis to conclude that such violation(s) has (have) been cured or corrected.

(b) The Responsible Person will be invited to attend an informal conference to discuss resolution of the matter.

§60.303. Informal Conference.

Possible outcomes of an informal conference include:

(1) An agreement to dismiss the matter with no further action. In this circumstance, the matter shall be reported to the Executive Director;

(2) An agreement to resolve the matter through corrective action without penalty. In this circumstance, the matter shall be reported to the Executive Director;

(3) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty. In this circumstance, a proposed agreed order will be prepared and it shall be presented to the Board for action; and

(4) No agreement is reached. In this circumstance, the Executive Director shall present to the Board a report detailing the information in §60.304 of this chapter (relating to Informal Meetings). The owner will be sent notice that the matter is being referred to the Governing Board with a recommendation that it be referred to the State Office of Administrative Hearings for a hearing.

§60.304. Informal Meetings.

If the Responsible Person(s) do(es) not accept the invitation to attend an informal meeting or if a meeting is held and results in an outcome described in §60.303(3) or (4) of this chapter (relating to Informal Conference), a report will be prepared containing:

(1) the uncorrected issue(s) of noncompliance;

(2) the legal citations for each of the specific violations;

(3) the recommended penalties, determined in accordance with the matrix set forth in §60.307 of this chapter (relating to Penalty Table), along with a narrative discussion to support any deviations from the matrix;

(4) a copy of any proposed agreed order; and

(5) any other matters deemed relevant.

§60.305. Report to the Board.

The informal meeting report shall be reviewed by the Executive Director. If approved, with or without changes, the matter shall be placed on the agenda of the Governing Board of the Department.

§60.306. Hearings.

(a) The Governing Board designates the State Office of Administrative Hearings ("SOAH") to hold all hearings on administrative penalties on the Board's behalf.

(b) If the Governing Board approves the Executive Director's Report to the Board, with or without modifications, and thereby approves proceeding with the assessment of administrative penalties, the Executive Director or his or her designee shall cause an administrative penalty hearing to be set before an administrative law judge at the SOAH, providing all required notices.

(c) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption of a final order.

(d) Following the administrative hearing, the administrative law judge will issue a proposal for decision. Once the proposal for decision is provided to the Executive Director, the matter shall be placed on the agenda to be considered at a subsequent meeting of the Governing Board of the Department.

§60.307. Penalty Table.

The Department has developed penalties in accordance with Texas Government Code §2306.042 and lists the violations and the maximum administrative penalties. Penalties begin to accrue on the day after the last day of the corrective action period.
Figure: 10 TAC §60.307

§60.308. Factors for Modifying Recommended Penalty.

The factors identified in §2306.042 of the Texas Government Code shall be used to make any deviations from the maximum administrative penalties provided for in the matrix set forth in Figure: 10 TAC §60.307 of this chapter (relating to Penalty Table).

§60.309. Debarment.

A Responsible Person may be debarred from participation in the low income housing tax credit program as provided for in §2306.6721 of the Texas Government Code.

(1) Recommendation for inclusion on the debarment list is made by referral from Department Division Directors. An Administrator, Affiliated Party, Person, or Responsible Party may also submit a referral to a Department Division Director for consideration.

(2) Before a person is recommended for debarment they shall be given written notice of the matter, setting forth the facts and circumstances justifying debarment under §2306.6721 of the Texas Government Code, and will be given a reasonable opportunity to cure the matter, if it is susceptible to cure.

(3) If the matter is not cured or not susceptible to cure, then upon recommendation by the Committee, the Executive Director may issue a notice of recommended debarment for the appropriate time period.

(4) In instances where the specific matters raised have been cured but the Responsible Person has demonstrated a significant pattern or practice of non-compliance compounded with a lack of being timely responsive, the Executive Director may still recommend debarment, despite the cure of individual matters. The recommended term of debarment shall be for the greater of:

(A) the period of any HUD debarment, if HUD debarment is the basis for debarment;

(B) up to five (5) years for materially violating any condition imposed by the Department in connection with the allocation of tax credits, or for material non-compliance with or repeatedly violating a land use restriction agreement regarding a development supported with a housing tax credit allocation; or

(C) up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(5) The person debarred shall have twenty (20) days from the date of the notice of recommended debarment to appeal the debarment to the Governing Board of the Department by sending written notification of appeal to the Executive Director, briefly stating the grounds for the appeal. If the person does not timely file an appeal to the Governing Board, the Executive Director's debarment recommendation becomes final.

(6) The Governing Board may decrease the term of any debarment for good cause stated on the record in the motion making the adjustment.

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 March 7, 2011.

TRD-201100899
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.108

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) §83.108, regarding the cosmetology program.

These proposed rule changes are necessary to define and create guidelines for the use of non-whirlpool foot basins, disposable spa liners, and portable whirlpool jets when providing manicure and pedicure services to cosmetology clients. The proposed rule changes were recommended by the Cosmetology Advisory Board at its meeting on February 28, 2011.

The Department proposes to amend §83.108 to add new subsections (f) - (l) which set out the definitions of non-whirlpool foot basins, disposable spa liners, and portable whirlpool jets. The subsections also list the sequential requirements for cleaning, disinfecting, and documenting the cleaning and disinfecting procedures along with requirements for retaining inspection records for a minimum of 60 days.

New subsection (f) which establishes procedures for the use of non-whirlpool foot basins is proposed to facilitate the business model of licensees who use basins, tubs, sinks, or bowls that hold non-circulating water when providing spa services.

Also, proposed new subsections (h) - (j), which define and allow disposable spa liners and portable whirlpool jets, are designed to provide cost-efficient alternatives to salon owners who wish to reduce the operating costs that are incurred with the purchase of chemical cleaning solutions. Disposable spa liners, which must be discarded after use, eliminate the need to daily clean and disinfect spa basins and screens and also eliminate bi-weekly cleaning and disinfecting which will reduce time and costs.

William H. Kuntz, Jr., Executive Director has determined that, for the first five-year period the proposed rule is in effect there will be no foreseeable implications relating to cost or revenues of state or local government as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be enhanced protection of public health and safety by prescribing sanitation procedures for the use of foot basins and spa liners, and clarifying existing procedures for foot spas, to help prevent the spread of infectious and contagious diseases.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed.

Since the agency has determined that the rule will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602 and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.108. Health and Safety Standards--Foot Spas, Foot Basins, and Spa Liners [~~Footspas~~].

(a) As used in this section, "whirlpool foot spa [~~footspa~~]" or "spa" is defined as any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the establishment. [~~The cleaning and disinfecting procedures for foot spas in this section shall be followed for units connected to an establishment's plumbing, and, to every extent possible, self-contained units.~~]

(b) After [~~Before~~] use upon each client [~~patron~~], each whirlpool foot spa shall be cleaned and disinfected in the following sequential manner.

(1) All water shall be drained and all debris shall be removed from the spa basin.

(2) The spa basin must be cleaned with soap or detergent and water.

(3) The spa basin must be disinfected with an EPA registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The spa basin must be wiped dry with a clean towel.

(c) At the end of each day, each whirlpool foot spa shall be cleaned and disinfected in the following sequential manner. [~~:~~]

(1) The screen and any other removable parts shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet and any other removable parts shall be washed with soap [~~and water~~] or detergent and water.

(2) Before replacing the screen, one of the following procedures shall be performed:

(A) The screen and any other removable parts shall be washed with a chlorine bleach solution of one-third (1/3) cup of 5.25% chlorine bleach to one (1) gallon of water; or

(B) The screen and any other removable parts shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(3) The spa system shall be flushed with soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(d) Every other week (bi-weekly), after cleaning and disinfecting as provided in this subsection, each whirlpool foot spa shall be cleaned and disinfected in the following sequential manner. [~~:~~]

(1) The spa basin shall be filled completely with water and one-third (1/3) cup of 5.25% bleach for each one (1) gallon of water.

(2) The spa system shall be flushed for 5 to 10 minutes with the chlorine bleach and water solution or an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions [~~for 5 to 10 minutes~~] and allowed to sit for 6 to 10 hours.

(3) The spa system shall be drained and flushed with water before use upon a client [~~patron~~].

(e) For whirlpool foot spas, a [~~A~~] record shall be made on a department-approved form [~~prescribe by the department~~] of the date and time of each cleaning and disinfecting indicating whether the cleaning was a daily or bi-weekly cleaning. This record shall be made at or near the time of cleaning and disinfecting and [~~. The record~~] shall indicate if a spa was not used [~~at all~~] during any individual work day. [~~Cleaning and disinfecting records shall be made available upon request by either a patron or a department representative.~~]

(f) As used in this section "non-whirlpool foot basin" or "foot basin" is defined as any basin, tub, footbath, sink or bowl that holds non-circulating water. After use upon each client, each non-whirlpool foot basin shall be cleaned and disinfected in the following sequential manner.

(1) All water shall be drained and all debris shall be removed from the foot basin.

(2) The inside surfaces of the foot basin must be scrubbed and cleaned of all visible residues with a clean brush, soap or detergent, and water.

(3) The foot basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal and virucidal activity which must be used according to the manufacturer's instructions.

(4) The foot basin must be rinsed, emptied and wiped dry with a clean towel.

(g) For non-whirlpool foot basins, a record shall be made on a department-approved form of the date and time of each cleaning and disinfecting. The record shall be made at or near the time of cleaning and disinfecting and shall indicate if the foot basin was not used during any individual work day.

(h) As used in this section "disposable spa liner" or "spa liner" is defined as a plastic liner designed to be placed within a whirlpool foot spa and discarded after a single use and which is equipped with a single "non-adhesive" heat-sealed drain tab which, when pulled, allows water to empty directly into a whirlpool foot spa drain.

(i) As used in this section "portable whirlpool jet" or "jet" is defined as a magnetic or other circulating device, designed to be placed within a whirlpool foot spa basin in order to circulate water in spas in which disposable spa liners are used.

(j) Disposable spa liners and portable whirlpool jets may be used in providing spa services to clients. When used, the following sequential procedures shall be performed.

(1) After use upon a client, the heat sealed tab shall be pulled allowing the water to empty directly into the cosmetology establishment's plumbing system.

(2) The spa liner shall be discarded in a covered trash receptacle.

(3) The portable whirlpool jet shall be completely immersed for 5 to 10 minutes in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The jet shall be rinsed with warm water and drained.

(5) All surfaces of the spa basin and foot rest shall be wiped with EPA-registered disinfectant wipes.

(k) For disposable spa liners and whirlpool jets, a record shall be made on a department-approved form indicating the time and date when the spa liner was used and discarded and when the jet was used

and disinfected and shall indicate if the jet was not used during a work day.

(l) Cleaning and disinfecting records for foot spas, foot basins, spa liners and jets shall be made available upon request by either a client or a department representative and shall be retained for inspection for at least 60 days.

(m) [~~(f)~~] A foot spa, foot basin or jet [~~footspa~~] for which documentation is not maintained in accordance with this section [~~rule~~] must be removed from service and not used again until it has been [~~be~~] cleaned and disinfected in accordance with the requirements of this section [~~rule~~] and the records have been properly updated. When a foot spa, foot basin or jet is removed from service for any reason, the record must indicate the date of removal from service.

(n) [~~(g)~~] Foot spa and foot basin [~~Footspa~~] chairs shall be cleaned and disinfected after service is provided [~~prior to providing service~~] to each client. The chair shall be made of or covered in a non-porous material that can be disinfected.

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 March 7, 2011.

TRD-201100910
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-7348

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PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES

DIVISION 1. ENTRIES

16 TAC §313.110

The Texas Racing Commission (Commission) proposes an amendment to 16 TAC §313.110, concerning the coupling of horses for wagering purposes when they have common interests through ownership, training, or lease. The proposed amendment will remove the requirement to couple a trainer's horses if the trainer owns an interest in either horse.

Chuck Trout, Interim Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be to increase the number of betting interests available to the public.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Weiss, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to make rules to regulate pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated Article 179e.

§313.110. Coupled Entries.

(a) (No change.)

(b) If two horses entered in a race are owned in whole or in part by the same individual or entity, [~~or if the trainer owns an interest in either horse,~~] the entry shall be coupled as a single wagering interest.

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 March 7, 2011.

TRD-201100911
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.111

The Texas Racing Commission (Commission) proposes an amendment to 16 TAC §319.111, concerning Bleeders and Furosemide Program, concerning Exercise Induced Pulmonary Hemorrhage (EIPH) events and the administration of furosemide. The current rule provides that a horse that experiences its first EIPH event is ineligible to compete for 12 days, unless the horse is competing on furosemide, in which case the horse is ineligible to compete for 30 days. The proposed change would make a horse that experiences its first EIPH event ineligible to compete for 12 days, regardless of whether the horse competed on furosemide.

Chuck Trout, Interim Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Mr. Trout has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be to standardize the regulation of EIPH events and to bring the Commission's rules more closely into alignment with the national model rules.

The rule will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Carolyn Weiss, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing.

The amendment implements Texas Revised Civil Statutes Annotated Article 179e.

§319.111. Bleeders and Furosemide Program.

(a) (No change.)

(b) Admission to Furosemide Program.

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

(3) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to an initial period of ineligibility under subsection [~~An EIPH event experienced by a horse that is admitted to the furosemide program is deemed to be a second EIPH event for the purpose of Subsection~~] (g) of this section.

(c) - (h) (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 March 7, 2011.

TRD-201100912
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §9.1, concerning Definitions, for the purpose of permitting public two-year colleges to award an academic certificate to students who complete fifty percent of the curriculum specified in a voluntary transfer compact.

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

Dr. Stephenson has also determined that for each year of the first five years the amended rule is in effect, the public benefit would be the establishment of students' eligibility to receive an academic certificate for completing fifty percent of the curriculum specified in a voluntary transfer compact at a public two-year college. There will be no impact on small businesses nor any adverse impact on local employment. Colleges may currently award academic certificates under the provisions of §9.185. The institutional cost of awarding additional certificates pursuant to the amended rule would be minimal.

Comments on the proposed amendment may be submitted to Dr. 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 amendment is proposed under the provisions of Texas Education Code, Chapter 61, Subchapter C, 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 proposed amendment affects Texas Education Code, Chapter 61, Subchapter C.

§9.1. Definitions.

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

(1) - (26) (No change.)

(27) Voluntary statewide transfer compact [~~Statewide Articulated Transfer Curriculum~~]--A set of courses, up to the level of an academic associate degree, that will satisfy the lower-division requirements of a baccalaureate degree in a specific discipline. A voluntary statewide transfer compact [~~statewide articulated transfer curriculum~~] must:

(A) have the same rigor and content as the equivalent course work in the baccalaureate program offered at a general academic teaching institution;

(B) minimize the time and course work required to complete a baccalaureate degree;

(C) be consistent with the common course numbering system approved by the Board and the recommendations and rules of the Board; and

(D) include only course work directly applicable to the requirements of the baccalaureate degree program(s) with which it is associated.

(28) - (33) (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 March 7, 2011.

TRD-201100905

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 28, 2011
For further information, please call: (512) 427-6114

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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §9.183, §9.185

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.183 and §9.185, concerning Academic Associate Degree and Certificate Programs, for the purpose of permitting public two-year colleges to award an academic certificate to students who complete fifty percent of the curriculum specified in a voluntary transfer compact.

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

Dr. Stephenson has also determined that for each year of the first five years the amended rule is in effect, the public benefit would be the establishment of students' eligibility to receive an academic certificate for completing fifty percent of the curriculum specified in a voluntary transfer compact at a public two-year college. There will be no impact on small businesses nor any adverse impact on local employment. Colleges may currently award academic certificates under the provisions of §9.185. The institutional cost of awarding additional certificates pursuant to the amended rule would be minimal.

Comments on the proposed amendments may be submitted to Dr. 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 provisions of Texas Education Code, Chapter 61, Subchapter C, 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 proposed amendments affect Texas Education Code, Chapter 61, Subchapter C.

§9.183. Degree Titles, Program Length, and Program Content.

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

(c) Except as provided in paragraphs (1), (2), and (3) of this subsection, academic associate degree programs must incorporate the institution's approved core curriculum as prescribed by §4.28 of this title (relating to Core Curriculum) and §4.29 of this title (relating to Core Curricula Larger than 42 Semester Credit Hours).

(1) (No change.)

(2) A college may offer a specialized academic associate degree that incorporates a voluntary statewide transfer compact [~~Board-approved statewide articulated transfer curriculum~~] and a portion of the college's approved core curriculum if the coursework for both would total more than 66 SCH.

(3) (No change.)

§9.185. Academic Certificates.

A college may award an academic certificate to a student who completes:

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

(3) fifty percent of the courses specified in a voluntary statewide transfer compact. [~~a Board-approved statewide articulated transfer curriculum of less than degree length.~~]

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 March 7, 2011.

TRD-201100906
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 28, 2011
For further information, please call: (512) 427-6114

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes an amendment to §4.1, concerning Transportation of Hazardous Materials.

The proposed amendment updates the rule so that it reflects April 1, 2011 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

Denise Hudson, Assistant Director, 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.

Ms. Hudson has 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 to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

Ms. Hudson has also 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 antici-

pated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, March 28, 2011, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to §4.1 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major David Palmer at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendment is proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through April [~~November~~] 1, 2011 [~~2010~~]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through April [~~November~~] 1, 2011 [~~2010~~].

(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 March 3, 2011.

TRD-201100868
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11, §4.14

The Texas Department of Public Safety (the department) proposes amendments to §4.11 and §4.14, concerning Regulations Governing Transportation Safety.

The proposed amendment for §4.11 updates the rule so that it reflects April 1, 2011 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

The proposed amendment for §4.14 clarifies the primary commercial vehicle enforcement program purpose and includes additional provisions for municipal and county agencies to be certified to enforce federal safety regulations. Finally, this amendment clarifies that failure to comply with any provisions of this section is grounds to decertify a municipality's or county's authority to enforce federal safety regulations.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

The department has determined that this proposal is not a "major environmental rule" as defined by Texas 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 Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, March 28, 2011, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to §4.11 and §4.14 regarding Regulations Governing Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major David Palmer at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through April [~~November~~] 1, 2011 [~~2010~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through April [~~November~~] 1, 2011 [~~2010~~]. The rules adopted herein are to ensure that:

(1) - (5) (No change.)

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

§4.14. Municipal and County Certification Requirements.

(a) Certain peace officers from an authorized municipality or county may be trained and certified to enforce the federal safety regulations provided the municipality or county:

(1) - (7) (No change.)

(8) agrees to investigate and determine whether a correction to the data needs to be made when that data is challenged; to notify the motor carrier and the department in writing of the results of the investigation within 10 days; and then to make any needed corrections and forward the corrected reports to the department immediately; [~~and~~]

(9) acknowledges that the department may conduct random in-person observation of inspections conducted in order to ensure that the officers maintain practical proficiency in the commercial vehicle inspection program;[~~.~~]

(10) acknowledges that the primary purpose of certification to enforce federal safety regulations is to improve commercial vehicle safety and ensure voluntary compliance with applicable laws and regulations;

(11) acknowledges that certification to enforce federal safety regulations may not be used as a primary method to generate program revenue through enforcement penalties or enhance criminal interdiction activities; and

(12) acknowledges that officers certified to enforce federal safety regulations will not participate in secondary employment activities that present a conflict of interest related to their commercial vehicle enforcement duties.

(b) Non-compliance with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality or county, including timeliness of reporting data, or any other provision of this section, will constitute grounds to decertify the municipality's or county's authority to enforce the federal safety regulations.

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

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

Filed with the Office of the Secretary of State on March 3, 2011.

TRD-201100869
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.35

The Texas Department of Public Safety (the department) proposes amendments to §35.35, concerning Standards of Service. These amendments are necessary to comply with statutory requirements of Texas Occupations Code, §1702.288(e).

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson 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 are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendment will be more information and greater protection for the consumer of alarm services. There should be no economic costs resulting from the amendment of this rule.

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

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

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

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 Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.288 are affected by this proposal.

§35.35. Standards of Service.

(a) In accordance with subsection (c) of this section, a licensee shall inform each client he is entitled to receive a written contract that contains the fee arrangement with necessary information covering services to be rendered.

(b) A written contract for services required to be licensed under the Act shall be furnished to a client within seven days after a request is made for such written contract. The written contract shall contain the fee arrangement, with the necessary information covering services to be rendered.

(c) A written contract for services requiring a license under the Act shall be dated and signed by the owner, manager, or a person authorized by one or either of them to sign written contracts for the licensed company.

(d) Each licensee that has a contract to provide services licensed by the board within seven days after entering into a contract for services regulated by the board with another licensee shall:

(1) notify the recipient of those services of the name, address, and telephone number, and individual to contact at the company which purchased the contract;

(2) notify the recipient of services at the time the contract is negotiated that another licensed company may provide any, all or part of the services requested by sub-contracting or outsourcing those services; and

(3) if any of the services are sub-contracted or outsourced to a licensed third party, the recipient of services must be notified of the name, address, phone number and license number of the company providing those services.

(e) Where the services are those of an alarm system company or monitoring service, the notice required under subsection (d) of this section shall:

(1) be mailed to the recipient in a written form that emphasizes the required information; and

(2) include stickers or other materials to be affixed to an alarm system indicating the alarm system company's or alarm systems monitor's new telephone number.

(f) Subsection (e) of this section shall not apply to an alarm system company that subcontracts its monitoring services to another alarm system company if the following conditions are met:

(1) the contract for monitoring is with another properly licensed alarm systems company;

(2) the contract between the original contracting licensee and the client remains in full force and effect, continues to govern all rights of the client with respect to the provision of alarm services, and remains in the control of the original contracting licensee;

(3) neither the contact information provided to the client, nor the address and telephone numbers for alarm service, have changed as a result of the subcontracting arrangement; and

(4) the contact information provided to the client relating to the monitoring of the alarm system has not changed.

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 March 3, 2011.

TRD-201100870
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

37 TAC §35.187

The Texas Department of Public Safety (the department) proposes new §35.187, concerning Renewal Applications. This new rule is intended to clarify and articulate the Private Security

Board's current interpretation of the Texas Occupations Code, Chapter 1702's requirements relating to renewal applications and clarifies for renewal applicants and department staff, the documents necessary for application. The rule also authorizes the submission of electronic fingerprints, the use of proof of identification issued by other states, and requires documentation of work authorization from non-resident alien applicants.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson 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 are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the new rule will be greater efficiency in the manner in which the department administers the statute and greater assurance that those who are registered are legally entitled to work in the United States. There should be no economic costs resulting from this new rule.

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

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

Written comments on the proposed new rule are requested and may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rule is 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 Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.307 are affected by this proposal.

§35.187. Renewal Applications.

A completed renewal application must be submitted on the most current version of the form provided by the department. The application must include:

(1) The required fee;

(2) A copy of a state or government-issued identification card, issued by the state of Texas or by the state of the applicant's residence;

(3) Renewal applicants who are not United States citizens shall submit:

(A) A copy of their current alien registration card and a copy of a current work-authorization card.

(B) Commissioned security officers who are non-resident aliens must also submit a copy of a current hunting license or other documents establishing the right to possess firearms under federal law.

(4) Commissioned security officers (all Level III and IV registrants) only: At the first renewal following September 1, 2011, each individual for whom the department does not have on file a set of fingerprints that can be resubmitted to the FBI must submit at least two sets of fingerprints on fingerprint cards approved by the department, or submitted electronically through a department approved vendor. In addition, each applicant must submit the $25 FBI fingerprint fee. This is a one-time requirement that expires following the completion of one renewal cycle, following September 1, 2011.

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

Filed with the Office of the Secretary of State on March 3, 2011.

TRD-201100871
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER N. COMPANY LICENSE QUALIFICATIONS

37 TAC §35.222

The Texas Department of Public Safety (the department) proposes new §35.222, concerning Qualifications for Locksmith Company License. This new rule is intended to articulate the Private Security Board's guidelines relating to the experience requirements for licensure as a locksmith company, as authorized by Texas Occupations Code, §1702.115.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson 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 are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the new rule will be greater assurance that those who are licensed as locksmith companies have the necessary experience to perform such services. There should be no economic costs resulting from this new rule.

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

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

Written comments on the proposed new rule are requested and may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rule is 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 Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.115 are affected by this proposal.

§35.222. Qualifications for Locksmith Company License.

(a) Pursuant to §1702.115 of the Act, the board has determined that an applicant for licensure as a locksmith company (as owner), or the prospective manager of the applicant company, must meet one of the following qualifications:

(1) Qualification option one. Two consecutive years of full-time locksmith-related experience; or

(2) Qualification option two.

(A) Successful completion of a department-approved 48-hour basic locksmith course and a 600-hour fundamentals of locksmith course, with the following curriculum content:

(i) Introduction to locksmithing.

(ii) State of Texas DPS-PSB regulations and rules.

(iii) State of Texas and US Government business requirements.

(iv) Key blank identification.

(v) Key machine and key duplication.

(vi) Codes and code cutting.

(vii) Basic lock types.

(viii) Basic picking.

(ix) Rim and mortise cylinders.

(x) Key in knob/key in lever locks.

(xi) Deadbolts and mortise locks.

(xii) Installations.

(xiii) Impressioning.

(xiv) Basic master-keying.

(xv) Basic safe servicing.

(xvi) Small format interchangeable core.

(xvii) High security and key control cylinders.

(xviii) Automotive opening.

(xix) Automotive key generation and programming.

(xx) Exit/panic device servicing, replacement, and installation.

(xxi) Door closer servicing, replacement, and installation.

(xxii) Cabinet and drawer lock servicing, replacement, and installation.

(xxiii) Safe installation, moving, and anchoring.

(xxiv) Single door access control service and installation.

(B) Successful passage of a basic locksmith proficiency exam that covers a minimum of 12 locksmith subjects and is approved by the department; and

(C) Successful completion of a 2000-hour internship with a locksmith company, licensed in continuous good standing in the state of Texas.

(b) Other combinations of education and locksmith-related experience may be substituted by an applicant for licensure as a locksmith company (as owner), or the prospective manager of the applicant company, at the discretion of the department.

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 March 3, 2011.

TRD-201100872
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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SUBCHAPTER U. LOCKSMITH

37 TAC §35.311

The Texas Department of Public Safety (the department) proposes amendments to §35.311, concerning Exemptions. The amendments to this rule are intended to clarify the scope of the statutory exemption for those involved in the repossession of property who perform locksmith services, and who would otherwise be regulated under the Private Security Act. The need for such a rule was recognized by the Office of the Attorney General, in Attorney General Opinion No. GA-0275.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson 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 are no anticipated economic costs to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendment will be greater clarity in the application and scope of the statute, contributing to enhanced efficiency in its enforcement. There should be no economic costs resulting from this amendment.

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

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

Written comments on the proposed amendment are requested and may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

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 Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061 and §1702.324(b)(3) are affected by this proposal.

§35.311. Exemptions.

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

(c) Repossession agents who are exclusively engaged in the business of repossession are exempted from licensure under the Act while using their own equipment and employees to decode or make keys, or to install or repair locks, for the property repossessed. Any third party contractor engaged to perform such services must be licensed as a locksmith.

(d) [~~(c)~~] The exemptions listed in subsections (a) - (c) [~~(a) and (b)~~] of this section apply only if the person does not use the term "locksmith" or any similar term, or otherwise create the impression in a reasonable consumer that the person is a licensed locksmith.

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 March 3, 2011.

TRD-201100873
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-5848

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.3

The Texas Youth Commission (TYC) proposes an amendment to §87.3, concerning Rehabilitation Program Stage Requirements and Assessment. The amendment establishes that a youth's stages in the rehabilitation program may be demoted for serious misconduct, as described in §95.3 of this title. An amendment to §95.3 detailing the rule violations which are eligible for stage demotion is also published in this issue of the *Texas Register.*

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

James Smith, Director of Youth Services, has 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: (1) enhanced facility and community safety through increased accountability for serious misconduct; and (2) an opportunity for TYC youth and staff to re-focus on the development and implementation of skills necessary for youth to successfully re-enter their communities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The amendment is proposed under: (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; (2) Human Resources Code §61.045, which assigns TYC with responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the TYC; and (3) Human Resources Code §61.076, which provides TYC with the authority to require a youth committed to TYC to participate in moral, academic, vocational, physical, and correctional training and activities.

The proposed amendment implements Human Resources Code, §61.034.

§87.3. Rehabilitation Program Stage Requirements and Assessment.

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

(e) General Process for Stage Assessment.

(1) - (5) (No change.)

(6) Youth may not be demoted in stage, except when:[.]

(A) stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §95.3 of this title; or

(B) a youth is returned to a high restriction facility, in accordance with subsection (l) of this section.

(7) (No change.)

(f) (No change.)

(g) Roles and Responsibilities for Multi-Disciplinary Team Meetings.

(1) (No change.)

(2) The multi-disciplinary team for each dormitory or living unit meets weekly to discuss each youth's weekly performance ratings and other living unit issues.

(A) (No change.)

(B) On a weekly basis, the MDT makes decisions about youth participation in campus programs, participation in leisure skills building groups or extracurricular activities, approves various youth requests/suggestions, and makes recommendations to facility administration regarding youth movement due to specialized program need, program completion, or lack of [~~or~~] progress in the assigned program.

(3) - (4) (No change.)

(h) - (j) (No change.)

(k) Development of the Individual Case Plan. The following case planning activities are required of the PSW after a stage assessment:

(1) (No change.)

(2) youth who have completed stage 3 and who are within 120 [~~90~~] days of their minimum length of stay or minimum period of confinement will have a transition ICP initiated. The plan will be developed based upon the youth's individualized risk factors, strengths, and needs.

(l) Stage Assessment Upon Return to a High Restriction Facility.

(1) Youth who are returned to high restriction from a medium restriction facility for disciplinary reasons as a result of a due process hearing (other than parole revocation hearing) are placed on stage 3, or are retained on the current stage if currently assigned to stage 1 or 2.

(2) (No change.)

(m) (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 March 7, 2011.

TRD-201100916
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-6014

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CHAPTER 95. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

SUBCHAPTER A. BEHAVIOR MANAGEMENT

37 TAC §95.3

The Texas Youth Commission (TYC) proposes an amendment to §95.3, concerning Rules and Consequences for Residential Facilities. The amendment allows for demotion of one or more stages in the agency's rehabilitation program as a consequence for two specific rule violations. The two rule violations are: (1) assault causing serious bodily injury to youth or staff; and (2) sexual misconduct causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger or other object. The amendment also defines serious bodily injury.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

James Smith, Director of Youth Services, has 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: (1) enhanced facility and community safety through increased accountability for serious misconduct; and (2) an opportunity for TYC youth and staff to re-focus on the development and implementation of skills necessary for youth to successfully re-enter their communities.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The amendment is proposed under: (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; (2) Human Resources Code §61.045, which assigns TYC with responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the TYC; and (3) Human Resources Code §61.076, which provides TYC with the authority to require a youth committed to TYC to participate in moral, academic, vocational, physical, and correctional training and activities.

The proposed amendment implements Human Resources Code, §61.034.

§95.3. Rules and Consequences for Residential Facilities.

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

(c) Definitions. The following terms, as used in this rule, have the following meanings.

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

(5) Serious Bodily Injury--bodily injury which involves:

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(d) General Provisions.

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

(7) Within 24 hours after a report of a major rule violation or a minor rule violation resulting in a security referral, a case worker, program supervisor [~~specialist~~], or other appropriate non-involved staff member will review the incident and assess whether to request a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record. The facility administrator or designee will determine whether or not to hold a Level II due process hearing. When a youth is found to be in possession of prohibited money as defined in this rule, a Level II due process hearing is required to seize the money. Seized money will be placed in the student benefit fund in accordance with §95.55 of this title.

(8) - (12) (No change.)

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

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

(C) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; or

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section.

(2) (No change.)

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

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

(C) Stage Demotion--a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing serious bodily injury to youth or staff, as defined in subsections (c)(5) and (i)(3) - (4) of this section; or

(ii) sexual misconduct, as defined in subsection (i)(21)(A) of this section.

(2) (No change.)

(g) - (j) (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 March 7, 2011.

TRD-201100918

Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.8

The Texas Veterans Commission (Commission) proposes new §452.8, concerning Employee Training and Education, which will be located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTION

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed new §452.8 is to define eligibility and payment for training and education of Commission administrators and employees in accordance with the State Employees Training Act, Texas Government Code §§656.041 - 656.049.

The proposed new rule is authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code, Chapter 656, Subchapter C.

It is the mission of the Texas Veterans Commission to provide superior service through the Agency programs of claims assistance, employment services, education and grants that will significantly improve the quality of life of Texas veterans and their families. This rule meets this mission by providing procedures for the Agency to provide training and educational programs for its administration and employees as part of its staff development and continuing education to improve the knowledge, skills and performance of its employees to better serve Texas veterans and their families. The creation of this rule ensures that the Agency maintains its mission of superior service.

PART II. EXPLANATION OF SECTION

§452.8. Employee Education and Training.

Sets out eligibility and payment for training and education of Agency administrators and employees in accordance with the State Employees Training Act, Texas Government Code §§656.041 - 656.049.

PART III. IMPACT STATEMENTS

Irma Rodriguez, Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the new rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed new rule.

There are no anticipated economic costs to persons required to comply with the proposed new rule.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the new rule.

Tina Carnes, General Counsel, Texas Veterans Commission, has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the proposed new rule will be a more educated workforce, and the increased ability to meet the Agency's mission.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed new rule may be submitted to Texas Veterans Commission, General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Employee Training Rules" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The proposed new rule is authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules for the effective administration of the Agency, and Texas Government Code, Chapter 656, Subchapter C.

No other statutes, articles or codes are affected by the proposed new rule.

§452.8. Employee Training and Education.

(a) With the approval of the Executive Director, the Commission may make available to its administrators and employees funds for training and education that improves the performance of the employee's current or prospective duty assignment in accordance with the State Employees Training Act, Government Code Chapter 656, Subchapter C, §§656.041 - 656.049.

(b) In order to be eligible for Agency supported training and education, the administrator or employee must demonstrate to the satisfaction of the Executive Director that the training or education is related to the duties or prospective duties of the administrator or employee.

(c) Eligible training and education expenses that are approved by the Executive Director may include, as appropriate, salary, tuition, and other fees, travel and living expenses, and/or training materials for the following:

(1) College Degree Programs;

(2) In-Service Training and Education; and/or

(3) Out-of-Agency Staff Development.

(d) The Commission may pay all or part of the expenses related to training and education as determined by the Executive Director, and may be adjusted at any time for any reason.

(e) An employee who completes training and education to obtain a degree or certification for which the Commission has provided all or part of the required fees must agree to remain in the employment of the Commission for a period of time as specified in the Commission's Employee Policy and Administrative Procedure Manual.

(f) The Commission may impose such terms and conditions as may be reasonable and appropriate, including but not limited to, specifying the circumstances under which the assistance may be terminated and the employee may be required to repay the amount of assistance.

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 March 4, 2011.

TRD-201100894
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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CHAPTER 454. GRANTS

40 TAC §§454.1 - 454.6

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

The Texas Veterans Commission (Commission) proposes the repeal of Chapter 454, §§454.1 - 454.6, concerning Grants, which will be replaced by proposed new Chapter 460, relating to Fund for Veterans' Assistance Program, located in Title 40, Part 15 of the Texas Administrative Code. New Chapter 460 is concurrently proposed with this repeal.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal of Chapter 454, §§454.1 - 454.6 is to propose new rules that clearly set out grant administration and monitoring procedures for the Fund for Veterans' Assistance Program under new Chapter 460, relating to Fund for Veterans' Assistance Program. The proposed repeal will provide for all rules relating to grant administration and monitoring to be in one chapter, and will improve clarity and consistency of the Agency's rules.

The proposed repeal is authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

PART II. EXPLANATION OF SECTIONS

The repeal of §§454.1 - 454.6 removes the existing rules that outline the general provisions regarding grants, and are being replaced with rules that establish in detail the application, administration and monitoring procedures of the Fund for Veterans' Assistance Program in proposed new Chapter 460.

PART III. IMPACT STATEMENTS

Irma Rodriguez, Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed repeal.

There are no anticipated economic costs to persons required to comply with the proposed repeal.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Bill Wilson, Director, Fund for Veterans' Assistance, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal.

Mr. Wilson has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated will be that the repealed sections will be replaced by a new chapter that will provide more clarity for grant applicants, grantees, and overall increased successful performance of the Fund for Veterans' Assistance to meet the needs of more Texas veterans and their families.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed repeal may be submitted to Texas Veterans Commission, General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "Grants Rules Repeal" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The repeal of the rules is proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by the repeal of these rules.

§454.1. Grant Conditions.

§454.2. Grant Officials.

§454.3. Evaluating Project Effectiveness.

§454.4. Retention of Records.

§454.5. Grant Management.

§454.6. Remedies for Noncompliance.

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 March 7, 2011.

TRD-201100908
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

The Texas Veterans Commission (Commission) proposes new Chapter 460, §§460.1 - 460.11, 460.20 - 460.24, 460.30 - 460.34, 460.40 - 460.43, and 460.50 - 460.53, concerning the Fund for Veterans' Assistance Program, which will be located in Title 40, Part 15 of the Texas Administrative Code.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF SECTIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed new Chapter 460 is to address the administration and monitoring procedures of the Fund for Veterans' Assistance (FVA) Program. Chapter 460 will also incorporate rules that are concurrently being repealed in Chapter 454 relating to Grants in order to avoid duplication of rules, and improve clarity and consistency.

Texas Government Code §434.017 allows the Commission to administer the Fund for Veterans' Assistance to enhance or improve veterans' assistance programs, including veterans' representation and counseling, and make grants to address veterans' needs.

The proposed new rules are authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

It is the mission of the Texas Veterans Commission to provide superior service through the Agency programs of claims assistance, employment services, education and grants that will significantly improve the quality of life of Texas veterans and their families. These rules meet this mission by providing procedures and guidance for the Agency's authority to distribute grants to organizations also dedicated to improving the quality of life of Texas veterans and their families. By creating a comprehensive set of rules that ensure that the distribution of grant funds is done in a uniform manner with sufficient oversight, the Agency maintains its mission of superior service.

The Texas Veterans Commission is the advocate for Texas Veterans, their families and their survivors. It is the philosophy and practice of the Agency to take the lead in coordinating efforts of service providers, sharing of resources, providing innovative and effective training, providing grants to organizations that address a broad range of veterans' needs and developing a partnership with other levels of government to achieve the highest quality of service in assisting the veterans, their families, and their survivors.

PART II. EXPLANATION OF SECTIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

§460.1. Purpose.

Sets out the purpose of the Fund for Veterans' Assistance is to provide grants to address the needs of veterans and their families, including enhancing veterans' assistance programs.

§460.2. Definitions.

Sets out definitions for terms used in the grant administration and monitoring of the Fund for Veterans' Assistance, as applicable to this chapter.

§460.3. Applicant Eligibility.

Sets out organizations that are eligible and not eligible to receive a grant from the Fund for Veterans' Assistance.

§460.4. Application Requirements.

Sets out application requirements that must be fulfilled to have a grant application considered for a grant from the Fund for Veterans' Assistance.

§460.5. Performance Measures.

Sets out performance measures that must be stated in each grant application and reported during the administration of the grant.

§460.6. Agency Access to Records.

Sets out the requirement of Agency access to Grantee records and personnel for the purpose of monitoring and other periodic reviews.

§460.7. Determination of Financial Stability.

Sets out financial stability as one criterion used to determine eligibility for a grant. This section also exempts counties and municipalities from the requirement to demonstrate financial stability.

§460.8. Grant Objectives.

Sets out a list of grant objectives. Grant applications may include one of the listed objectives, or must demonstrate how it will meet the needs of veterans and their families.

§460.9. Administrative Costs.

Sets out administrative costs limitations. A grant application that has administrative costs that exceed the amount listed in the grant application instructions will not be eligible to receive a grant.

§460.10. Limitations on Grant Funds.

Sets out the limitations on grant funds. Grant funds will not be allowed to be used for items listed in this section. Use of grant funds for these purposes will be disallowed costs.

§460.11. Evaluation of Grant Applications.

Sets out the evaluation of grant applications will be made by the Commission and their decisions are final.

SUBCHAPTER B. MONITORING ACTIVITIES

§460.20. Purpose.

Sets out the purpose of the monitoring activities to ensure that the Grantee meets all of the expenditure and performance requirements as set forth in these rules and the Grant Agreement.

§460.21. Monitoring Activities.

Sets out the grant and fiscal monitoring of the Grantee through site visits, desk audits and other periodic review of Grantee's performance and expenditures.

§460.22. Grant Monitoring.

Sets out the program monitoring activities that are designed to ensure that the Grantee's performance is meeting the requirements of the Grant Agreement.

§460.23. Fiscal Monitoring.

Sets out the fiscal monitoring activities that are designed to ensure that fund resources are protected from fraud, waste or abuse.

§460.24. Monitoring Reports.

Sets out monitoring reports that are designed to provide a Grantee with the Agency's evaluation of their performance and fiscal responsibility under the Grant Agreement.

SUBCHAPTER C. CORRECTIVE ACTION

§460.30. Purpose.

Sets out the purpose of corrective action that is designed to ensure compliance with the Grant Agreement. Such compliance may be assessed at any time during the grant period.

§460.31. Noncompliance.

Sets out the compliance expectations of the Agency and dictates that noncompliance will result in the initiation of corrective action.

§460.32. Corrective Action.

Sets out corrective action that the Agency may impose on a Grantee for noncompliance.

§460.33. Notification of Corrective Action.

Sets out notification of corrective action that the Agency will send to a Grantee that is found in noncompliance with these rules and/or the Grant Agreement.

§460.34. Appeal of Corrective Action.

Sets out appeal of corrective action for the interruption of contract payments, deobligation of funds, future grant ineligibility, or termination of Grant Agreement.

SUBCHAPTER D. DEOBLIGATION OF GRANT FUNDS

§460.40. Purpose.

Sets out purpose of deobligation of funds is to ensure that no funds are expended in noncompliance with these rules and/or the Grant Agreement.

§460.41. Deobligation of Grant Funds.

Sets out the deobligation of funds and the acts of a Grantee that will invoke such action.

§460.42. Notification of Deobligation.

Sets out notification of deobligation of funds that the Agency will send to a Grantee that is found in noncompliance with these rules and/or the Grant Agreement.

§460.43. Appeal of Deobligation of Grant Funds.

Sets out appeal of deobligation of grant funds will be governed by Subchapter E of this chapter.

SUBCHAPTER E. APPEALS

§460.50. Purpose.

Sets out the purpose of appeals is to allow a Grantee to appeal the decisions of the Agency regarding certain corrective actions and the deobligation of grant funds.

§460.51. Appealable Actions.

Sets out actions that are appealable by a Grantee.

§460.52. Appeal of Corrective Action.

Sets out the steps a Grantee must take to appeal an Agency decision to impose certain corrective actions.

§460.53. Appeal of Deobligation of Grant Funds.

Sets out the steps a Grantee must take to appeal an Agency decision to deobligate grant funds.

PART III. IMPACT STATEMENTS

Irma Rodriguez, Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the proposed new rules.

There are no anticipated economic costs to persons required to comply with the proposed new rules.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new proposed rules will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Bill Wilson, Director, Fund for Veterans' Assistance, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Mr. Wilson has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be increased accountability and successful performance of the Fund for Veterans' Assistance resulting in meeting the needs of more Texas veterans and their families.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed new rules may be submitted to Texas Veterans Commission, General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *tina.carnes@tvc.state.tx.us.* For comments submitted electronically, please include "FVA Rules" in the subject line. 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 REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §§460.1 - 460.11

The new rules are proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by these proposed new rules.

§460.1. Purpose.

The Texas Veterans Commission is authorized to use funds appropriated to the Fund for Veterans' Assistance to administer the fund, enhance or improve veterans' assistance programs, including veterans' representation and counseling and make grants to address the needs of both veterans and their families.

§460.2. Definitions.

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

(1) Advisory Committee--The committee formed under §458.2 of this title relating to Fund for Veterans' Assistance Advisory Committee.

(2) Agency--The Texas Veterans Commission.

(3) Commission--The members of the Texas Veterans Commission.

(4) Disallowed Cost--A questioned cost that the Agency has determined, violates the conditions of the Grant Agreement, or other law, regulation, or other document governing the expenditures of funds.

(5) Expenditure Benchmark--The percent of the total grant award that must be expended and reported by designated timeframes within the grant period. The specific timeframes are:

(A) If 25% of the grant period has elapsed, at least 15% of the total award amount must have been expended;

(B) If 50% of the grant period has elapsed, at least 40% of the total award must have been expended; and

(C) If 75% of the grant period has elapsed, at least 70% of the total award must have been expended.

(6) Grantee--An organization that receives a grant award under this chapter.

(7) Performance Benchmark--The percent of each minimum required performance measure that must be met and reported by designated timeframes within the grant period. The specific timeframes are:

(A) If 25% of the grant period has elapsed, at least 15% of minimum required performance measure targets must have been met;

(B) If 50% of the grant period has elapsed, at least 40% of minimum required performance measure targets must have been met; and

(C) If 75% of the grant period has elapsed, at least 70% of minimum required performance measure targets must have been met.

(8) Questioned Cost--A cost that has been identified to be:

(A) an alleged violation of a provision of the Grant Agreement, law, regulation, or other agreement or document governing the expenditure of funds;

(B) a cost that is not supported by adequate documentation; or

(C) a cost that is unnecessary or unreasonable.

(9) Received by the Agency--All documents shall be addressed to Texas Veterans Commission, Director, Fund for Veterans' Assistance and delivered by U.S. Mail, overnight delivery, hand delivery, or courier service to the Texas Veterans Commission headquarters no later than the close of business on the specified date.

(A) Documents delivered by U.S. Mail shall be addressed to Texas Veterans Commission, Director, Fund for Veterans' Assistance, Post Office Box 12277, Austin, Texas 78711-2277.

(B) Documents that are delivered by overnight delivery, hand delivery, or courier service shall be delivered to Texas Veterans Commission, Director, Fund for Veterans' Assistance, Stephen F. Austin Building, 1700 North Congress Avenue, Suite 800, Austin, Texas 78701.

(10) Units of Local Government--A county, municipality, special district, school district, junior college district, a local workforce development board created under §2308.253, Texas Government Code, or other legally constituted political subdivision of the state.

§460.3. Applicant Eligibility.

(a) The following are eligible to apply for grant funds:

(1) Units of local government;

(2) IRS Code §501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces;

(3) IRS Code §501(c)(3) private nonprofit organizations authorized to do business in Texas;

(4) Texas chapters of IRS Code §501(c)(4) veterans service organizations; or

(5) Nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

(b) The following are not eligible to apply for grant funds:

(1) Individuals;

(2) For-profit entities;

(3) Units of federal or state government, including state agencies, colleges, and universities;

(4) Organizations that have not fulfilled all legal requirements to operate in the state of Texas; and

(5) Organizations that do not have current operations in Texas or a Texas-based chapter.

(c) Other than counties or municipalities, applicants must provide proof of:

(1) professional liability and/or malpractice insurance; and

(2) financial stability, pursuant to §460.7 of this title relating to Determination of Financial Stability.

§460.4. Application Requirements.

A grant application received by the Agency shall meet the following requirements to be considered for funding:

(1) Completed according to grant application instructions; and

(2) Received by the Agency by the deadline established in the grant application instructions.

§460.5. Performance Measures.

Grantees must provide periodic program performance reports on the following:

(1) Number of veterans served;

(2) Number of dependents served (if applicable);

(3) Number of surviving spouses of veterans served (if applicable); and

(4) Other performance measures as determined by the Grant Agreement.

§460.6. Agency Access to Records.

(a) The Agency, or its authorized representatives, has the right of timely and reasonable access to any books, documents, papers, computer records, or other records of Grantees that are pertinent to the use of any funds administered by the Agency, in order to conduct monitoring, audits, and examinations, and to make excerpts, transcripts, and photocopies of such documents without cost to the Agency.

(b) The right of access also includes timely and reasonable access to Grantee personnel for the purpose of interview and discussion related to such documents.

(c) The right of access is not limited to any required record retention period but shall last as long as the records are retained.

§460.7. Determination of Financial Stability.

(a) An applicant must show financial stability in order to be eligible for a grant award. Criteria for the determination of financial stability are specified in the grant application.

(b) A grant application submitted with insufficient financial data to make a determination of financial stability, as specified in the grant application instructions, shall not be considered for funding.

(c) This section does not apply to counties or municipalities.

§460.8. Grant Objectives.

It is the objective of the Fund for Veterans' Assistance to provide grants to meet the needs of veterans and their families. Such needs include, but are not limited to, the following:

(1) limited emergency assistance for veterans and their families;

(2) transportation services;

(3) family and/or individual counseling for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI);

(4) employment, training, education, and job placement assistance;

(5) housing assistance for homeless veterans;

(6) family and child services;

(7) legal services, excluding criminal defense;

(8) development of professional services networks; and

(9) enhancement or improvement of veterans' assistance programs, including veterans' representation and counseling.

§460.9. Administrative Costs.

(a) Administrative costs shall not exceed the amount specified in the grant application instructions.

(b) Administrative costs must be budgeted by line-item in the grant application, unless:

(1) the applicant has a current Indirect Cost Rate Plan approved by a federal agency; or

(2) the applicant has an approved administrative cost allocation plan, as determined by the Agency.

(c) An applicant that has a current Indirect Cost Rate Plan approved by a federal agency or an Agency-approved administrative cost allocation plan may budget up to the amount of allowable administrative costs or the approved indirect cost rate, whichever is lower.

§460.10. Limitations on Grant Funds.

Grant funds cannot be used for the following:

(1) capital expenditures, including capital purchases or capital leases;

(2) sub-granting of funds to other organizations or agencies;

(3) distribution of cash or a cash equivalent to veterans and/or their families;

(4) acquisition or construction of facilities;

(5) scholarships for education;

(6) payment of child support;

(7) any expense that is not consistent with the Grant Agreement;

(8) contributions to any political party, political association, or the campaign of any candidate for public office, party office, or similar political activities;

(9) contributions that support or oppose candidates for public or party office, or to support or oppose any ballot propositions; or

(10) any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or under OMB Circular A-122 (Cost Principles for Nonprofit Organizations).

§460.11. Evaluation of Grant Applications.

(a) The Fund for Veterans' Assistance Advisory Committee will evaluate grant applications and make recommendations to the Commission.

(b) The Commission shall make the final funding decisions.

(c) Decisions by the Commission regarding funding are not appealable.

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 March 7, 2011.

TRD-201100927
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §§460.20 - 460.24

The new rules are proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by these proposed new rules.

§460.20. Purpose.

Monitoring activities are intended to ensure:

(1) that Grantees meet the expenditure and performance requirements of the Grant Agreement;

(2) Fund for Veterans' Assistance resources are used efficiently and effectively;

(3) Fund for Veterans' Assistance resources are protected from waste, fraud, and abuse; and

(4) reliable and timely information is captured and reported.

§460.21. Monitoring Activities.

(a) A Grantee shall cooperate with the Agency's program and fiscal monitoring activities, site visits, reviews of documentation and requests for information.

(b) Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial management and grant administration to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs.

(c) Monitoring activities shall assess a Grantee's compliance with the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations).

(d) The Agency may review all relevant records or a sample of records to assess a Grantee.

(e) Failure to comply with this subchapter shall result in corrective action pursuant to Subchapter C of this chapter relating to Corrective Action.

§460.22. Grant Monitoring.

(a) The Agency shall conduct grant monitoring activities to ensure that the Grantee will effectively implement the Grant Agreement, meet performance measures, and deliver high-quality services.

(b) Processes and procedures used to assess a Grantee may include the review and evaluation of one or more of the following:

(1) performance benchmarks;

(2) reporting accuracy;

(3) record keeping and file maintenance;

(4) efficacy and quality of the Grantee's service delivery;

(5) automated systems and reporting;

(6) policies and procedures; and

(7) other documents, processes, and systems as determined by the Agency.

(c) Processes and procedures used to assess a Grantee shall include a review, evaluation, and determination regarding compliance with the Grant Agreement including, the approved Statement of Work, approved performance measures, and other documents, processes and systems as determined by the Agency.

§460.23. Fiscal Monitoring.

(a) The Agency shall conduct fiscal monitoring activities to ensure that resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse.

(b) Processes and procedures used to assess a Grantee may include the review and evaluation of one or more of the following:

(1) accounting and reporting systems;

(2) budget methodologies;

(3) cash management practices;

(4) cost allocation plans and processes;

(5) cash disbursement compliance and documentation;

(6) insurance coverage and risk exposure;

(7) oversight and monitoring functions;

(8) payroll administration;

(9) purchasing and procurement processes and procedures;

(10) property accountability and safeguarding;

(11) expenditure benchmarks; and

(12) other documents, processes and systems as determined by the Agency.

(c) Processes and procedures used to assess a Grantee shall include a review, evaluation, and determination regarding compliance with the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations), and other documents, processes and systems as determined by the Agency.

§460.24. Monitoring Reports.

(a) The Agency shall issue a monitoring report summarizing its findings which will include, if applicable, questioned costs, disallowed costs, observations and recommendations.

(b) The Grantee shall provide information, supporting documentation, and a summary of actions the Grantee has taken or plans to take in response to the monitoring report. These materials must be received by the Agency no later than 21 days after the mailing date of the monitoring report.

(c) After evaluation of the Grantee's response, the Agency shall issue a final monitoring report. If disallowed costs remain, the final monitoring report will establish a debt against the Grantee for the disallowed amount.

(d) If findings are not resolved or debts are not paid, the Grantee may be subject to corrective action pursuant to Subchapter C of this chapter relating to Corrective Action, Subchapter D of this chapter relating to Deobligation of Grant Funds, or legal action.

(e) Fund for Veterans' Assistance grant funds shall not be used to reimburse the Agency for disallowed costs.

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 March 7, 2011.

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Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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SUBCHAPTER C. CORRECTIVE ACTION

40 TAC §§460.30 - 460.34

The new rules are proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by these proposed new rules.

§460.30. Purpose.

(a) The purpose of corrective action is to ensure compliance with the Grant Agreement as a result of findings cited in the Grantee's monitoring report, or to bring the Grantee into compliance with the Grant Agreement.

(b) The Agency may review monitoring reports, financial data, non-financial data, and performance data to evaluate a Grantee and assess the need for corrective action.

(c) The Agency may require, at any point during the grant period, that a Grantee cooperate with corrective action, including, but not limited to, entering into a Corrective Action Plan and other performance review and assistance activities.

§460.31. Noncompliance.

(a) The Agency may assess corrective action for failure to ensure, at any time during the grant period, compliance with the following:

(1) contracted performance measures;

(2) expenditure benchmarks;

(3) performance benchmarks; and/or

(4) the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations).

(b) The Agency may assess corrective action at any time during the grant period based on noncompliance of any portion of this chapter or the Grant Agreement.

§460.32. Corrective Action.

(a) The Agency may assess corrective action on a Grantee based on the following criteria as determined appropriate by the Agency given the circumstances surrounding the occurrence of the acts necessitating corrective action:

(1) Severity, nature, duration, and extent;

(2) Previous occurrences of acts necessitating corrective action; and

(3) Efforts by the Grantee to prevent the occurrence of acts necessitating corrective action, including efforts to:

(A) obtain technical assistance, training, or other assistance from the Agency or another entity;

(B) resolve monitoring findings; and

(C) prevent potential acts necessitating corrective action.

(b) The Agency may assess one or more of the following corrective actions:

(1) delay, suspension, or denial of contract payments;

(2) partial or full deobligation of funds;

(3) ineligibility for future grant awards;

(4) contract cancellation or termination;

(5) participation in technical assistance and quality assurance activities;

(6) submission of additional or more detailed financial or performance reports;

(7) mandatory participation in training;

(8) on-site monitoring visits;

(9) an Agency-developed and Grantee-implemented Corrective Action Plan to address the weaknesses identified; and

(10) other actions deemed appropriate by the Agency to assist the Grantee in correcting deficiencies.

§460.33. Notification of Corrective Action.

(a) The Agency will issue a Corrective Action letter to the Grantee when the Grantee is in noncompliance as defined in §460.31 of this title relating to Noncompliance. The Corrective Action letter will be sent by certified mail.

(b) In the Corrective Action letter, the Agency shall:

(1) provide notification of noncompliance;

(2) specify the corrective action as defined in §460.32(b) of this title relating to Corrective Action, required to be taken by the Grantee;

(3) set a timeline for the Grantee to implement the Agency-required corrective action; and

(4) describe any technical assistance available to the Grantee.

§460.34. Appeal of Corrective Action.

Appeal of Corrective Action applies to §460.32(b)(1) - (4) of this title relating to Corrective Action, and are governed by Subchapter E of this chapter relating to Appeals.

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 March 7, 2011.

TRD-201100929
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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SUBCHAPTER D. DEOBLIGATION OF GRANT FUNDS

40 TAC §§460.40 - 460.43

The new rules are proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by these proposed new rules.

§460.40. Purpose.

The purpose of this subchapter is to describe the acts of noncompliance that will initiate a deobligation of funds from a Grantee, how the Grantee will be notified of the deobligation of funds, and the process through which a Grantee may appeal the deobligation funds.

§460.41. Deobligation of Grant Funds.

Deobligation of grant funds may result for failure to ensure, at any time during the grant period, compliance with the following:

(1) expenditure benchmarks;

(2) performance benchmarks;

(3) timely resolution of monitoring findings;

(4) Corrective Action Plan, unless an appeal under Subchapter E of this chapter is yet to be finalized;

(5) periodic reporting requirements as specified in the Grant Agreement; and/or

(6) material breach of Grant Agreement.

§460.42. Notification of Deobligation.

(a) The issuance of a Notification of Deobligation letter shall be sent to the Grantee by certified mail.

(b) The Notification of Deobligation letter shall include:

(1) notification of noncompliance;

(2) the Agency's determination, which may include one or more of the following:

(A) partial deobligation of funds;

(B) full deobligation of funds;

(C) periodic monitoring or site visits; and

(D) other mitigating actions that may improve a Grantee's performance and rate of expending funds, consistent with timely and full completion of the Grant Agreement.

§460.43. Appeal of Deobligation of Grant Funds.

Appeal of a Notice of Deobligation of Grant Funds applies to §460.41 of this title relating to Deobligation of Grant Funds, and are governed by Subchapter E of this chapter relating to Appeals.

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-201100930
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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SUBCHAPTER E. APPEALS

40 TAC §§460.50 - 460.53

The new rules are proposed under Texas Government Code §434.010 and §434.017(d), which provide the Texas Veterans

Commission with the authority to establish rules that it considers necessary for the effective administration of the Agency, and for governing the award of grants by the Commission.

No other statutes, articles or codes are affected by these proposed new rules.

§460.50. Purpose.

The purpose of this subchapter is to identify appealable actions performed by the Agency and describe the appeal process for Grantees.

§460.51. Appealable Actions.

(a) A Grantee may appeal the following:

(1) Corrective action found in §460.32(b)(1) - (4) of this title relating to Corrective Action; and

(2) Deobligation of funds found in §460.41 of this title relating to Deobligation of Grant Funds.

(b) No other appeals may be made by a Grantee.

§460.52. Appeal of Corrective Action.

(a) The Grantee may provide a letter of appeal that must be received by the Agency no later than 14 days after the mailing date of the Corrective Action letter.

(b) The letter of appeal shall include:

(1) justification of why the corrective action should not be imposed;

(2) an explanation of how the Grantee will correct the noncompliance identified in the Corrective Action letter;

(3) an explanation of how the Grantee will ensure that any noncompliance identified in the Corrective Action letter will be avoided in the future; and

(4) any documents supporting the appeal.

(c) The Agency Executive Director, or his designee(s), makes the final decision to approve or deny the appeal.

(d) A letter of appeal received after the deadline stated in subsection (a) of this section shall not be considered.

(e) The decision of the Executive Director is final.

§460.53. Appeal of Deobligation of Grant Funds.

(a) The Grantee may provide a letter of appeal that must be received by the Agency no later than 14 days after the mailing date of the Notification of Deobligation letter.

(b) The letter of appeal shall include:

(1) justification of why the deobligation of grant funds should not be imposed;

(2) an explanation of how the Grantee will correct the determinations identified in the Notification of Deobligation letter;

(3) an explanation of how the Grantee will ensure that the determinations in the Notice of Deobligation letter will be avoided in the future; and

(4) any documents supporting the appeal.

(c) The Commission makes the decision to approve or deny the appeal.

(d) A letter of appeal received after the deadline stated in subsection (a) of this section shall not be considered.

(e) The decision of the Commission is final.

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-201100931
Tina M. Carnes
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: April 17, 2011
For further information, please call: (512) 463-1981

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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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §9.1 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 703).

Filed with the Office of the Secretary of State on March 3, 2011.

TRD-201100875
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: March 3, 2011
For further information, please call: (512) 427-6338

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SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

19 TAC §9.183, §9.185

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §9.183 and §9.185 which appeared in the February 11, 2011, issue of the *Texas Register* (36 TexReg 703).

Filed with the Office of the Secretary of State on March 3, 2011.

TRD-201100877
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: March 3, 2011
For further information, please call: (512) 427-6338

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

Proposed amended §362.1, published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7717), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on March 1, 2011.

TRD-201100813

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CHAPTER 367. CONTINUING EDUCATION AND CONTINUING COMPETENCY

40 TAC §§367.1 - 367.3

Proposed amended §§367.1 - 367.3, published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7720), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on March 1, 2011.

TRD-201100814

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 63. PUBLIC INFORMATION
SUBCHAPTER A. CONFIDENTIALITY OF INFORMATION REQUESTED FOR LEGISLATIVE PURPOSES

1 TAC §§63.1 - 63.6

The Office of the Attorney General (OAG) adopts new Chapter 63, Public Information, Subchapter A, Confidentiality of Information Requested for Legislative Purposes, §§63.1 - 63.6. Sections 63.1 - 63.3, 63.5, and 63.6 are adopted without changes to the proposed text as published in the December 3, 2010, issue of the *Texas Register* (35 TexReg 10569) and will not be republished. Section 63.4 is adopted with a minor change and will be republished. Specifically, §63.4(a)(2) was modified to correct a typographical error. The word "applies" has been changed to "apply."

The new rules establish the process by which a legislator seeks an attorney general decision about whether information requested under Texas Government Code §552.008 for legislative purposes and for which the legislator is required to sign a confidentiality agreement is confidential under law. The purpose of the new rules is to implement Senate Bill (SB) 1182, enacted by the 81st Legislature, Regular Session (2009), which amends Chapter 552 of the Texas Government Code (the Public Information Act). SB 1182 requires the attorney general to adopt rules establishing the procedures and deadlines for a member, committee, or agency of the legislature to seek an attorney general decision about whether information requested under Texas Government Code §552.008 and covered by a confidentiality agreement is confidential under law.

Section 63.1 (Definition, Purpose, and Application) defines the term "legislative requestor," states the purpose of Subchapter A, and makes the Public Information Act's mailbox rule applicable to all deadlines in Subchapter A.

Section 63.2 (Request for Attorney General Decision Regarding Confidentiality) describes the steps a legislative requestor must take in order to request an attorney general decision about whether information requested under Texas Government Code §552.008 and covered by a confidentiality agreement is confidential under law.

Section 63.3 (Notice) establishes the deadline by and manner in which the attorney general must notify a governmental body of a legislative requestor's request for a decision.

Section 63.4 (Submission of Documents and Comments) sets deadlines for a governmental body to (1) submit certain information to the attorney general upon receiving notice from the attorney general of a request for a decision, and (2) notify persons with property interests in the requested information. Section 63.4 also establishes procedures for the attorney general to receive written comments from a person with a property interest in the requested information and any other interested person.

Section 63.5 (Additional Information) allows the attorney general to obtain additional information from the governmental body if necessary and sets a deadline for the submission of such information.

Section 63.6 (Rendition of Attorney General Decision; Issuance of Written Decision) sets a deadline for the attorney general to issue a written decision and requires the decision be provided to the legislative requestor, the governmental body, and any interested person who submitted comments.

No comments were received regarding the proposed rules during the comment period.

The new sections are adopted in accordance with Texas Government Code §552.008(b-2), which requires the OAG to establish the procedures and deadlines for a member, committee, or agency of the legislature to seek an attorney general decision about whether information requested under Texas Government Code §552.008 and covered by a confidentiality agreement is confidential under law.

§63.4. Submission of Documents and Comments.

(a) Within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for a decision, a governmental body shall:

(1) submit to the attorney general:

(A) written comments stating the law that deems the requested information confidential and the reasons why the stated law applies to the information;

(B) a copy of the written request for information; and

(C) a copy of the specific information deemed confidential by the governmental body, or representative samples of the information if a voluminous amount of information was requested; and

(2) label the copy of the specific information, or the representative samples, to indicate which laws apply to which parts of the copy; and

(3) label the written comments to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(b) A governmental body that submits written comments to the attorney general shall send a copy of those comments to the legislative

requestor within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for a decision.

(c) If a governmental body determines a person may have a property interest in the requested information, the governmental body shall notify that person in accordance with Texas Government Code §552.305(d). The governmental body shall notify the affected person not later than the 10th business day after receiving written notice of the request for a decision.

(d) If a person notified in accordance with Texas Government Code §552.305 decides to submit written comments to the attorney general, the person must do so not later than the 10th business day after receiving the notice. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(e) Any interested person may submit written comments to the attorney general stating why the requested information is or is not confidential. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body.

(f) A person who submits written comments under subsection (d) or (e) of this section shall send a copy of those comments to both the legislative requestor and the governmental body.

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 March 7, 2011.

TRD-201100907
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Effective date: March 27, 2011
Proposal publication date: December 3, 2010
For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 13. GRAIN WAREHOUSE

4 TAC §§13.2, 13.6, 13.7, 13.14 - 13.16, 13.18

The Texas Department of Agriculture (the department) adopts the amendments to §§13.2, 13.6, 13.7, 13.14 - 13.16 and 13.18, concerning regulation of public grain warehouse, without changes to the proposed text as published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 121).

The department administers a grain warehouse program to license and inspect businesses that store grain for producers and other grain depositors. These amendments are adopted to increase protection for grain depositors and clarify the bond claim process. The changes are the result of a recent grain warehouse program review conducted by a Grain Warehouse Task Force, appointed by the Commissioner of Agriculture.

The adopted change to §13.2 mirrors federal grain warehouse requirements by allowing a grain warehouse operator to make a change in a daily position report from stored grain to company owned grain, when supported by a proof of payment instead of the current requirement of a canceled check. This change will allow a warehouse operator to take possession of stored grain once payment has been made for stored grain.

The adopted change to §13.6 clarifies that the only acceptable forms of financial statements that may be submitted to the department are either a reviewed or audited financial statement from a certified public accountant. The adopted change eliminates a notarized financial statement on a department approved form. The adopted changes will provide the most accurate required financial information to the department in order to determine net worth financial stability.

The adopted change to §13.7 eliminates proration of fees. The department no longer prorates licensing fees since licenses are now issued with staggered expiration dates throughout the year, instead of one annual expiration date.

The adopted changes to §13.14 and §13.16 clarify requirements. The adopted change to §13.15 removes requirements that conflict with the Texas Business Code.

The adopted change to §13.18 clarifies the time at which price for all commodities is fixed for claims on a warehouse operator's bond in order to compute a fair pro-rata share of bond proceeds to all depositors with outstanding claims.

The department received seven comments on the proposal from members of the Grain Warehouse Task Force. Comments were received from the Corn Producers Association of Texas, First Victoria National Bank, South Texas Cotton and Grain Association, Texas Corn Producers Board, Texas Farm Bureau, Texas Grain and Feed Association, and Texas Wheat Producers Association.

All seven comments support the proposed rules. All comments agree that it is a vital component in addressing the prevention of a failure to require all grain warehouse licensees to submit either a reviewed or audited financial statement from a certified public accountant.

Two comments agreed that a proof of payment opposed to a canceled check will clear the confusion of when depositors grain can be moved to a company owned position. This will mirror the Federal program.

The amendments are adopted under the Texas Agriculture Code (the code), §14.015, which provides the department with the authority to adopt rules necessary for the administration of requirements and procedures for the operation of a grain warehouse; and the code §14.023, which provides the department with the authority to provide by rule for an annual license fee for a grain warehouse license.

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 March 1, 2011.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §§25.361 - 25.363

The Public Utility Commission of Texas (commission) adopts amendments to §25.361, relating to Electric Reliability Council of Texas (ERCOT), §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, and §25.363, relating to ERCOT Budget and Fees, with changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8025). The amendments will make ERCOT more accountable to the commission, consistent with Public Utility Regulatory Act (PURA) §39.151, and introduce additional controls over the budget and fees of this organization. These amendments are competition rules subject to judicial review as specified in PURA §39.001(e). These amendments are adopted under Project Number 38338.

The commission received comments on the proposed amendments from the City of Austin, doing business as Austin Energy (Austin Energy); CPS Energy; the Electric Reliability Council of Texas (ERCOT); the Steering Committee of Oncor Cities (Oncor Cities); Texas Competitive Power Advocates (TCPA), consisting of Calpine Energy Services, LP, Constellation Energy Commodities Group, Exelon Generation (Power Team), GDF-SUEZ Energy Marketing NA, Inc., Gregory Power Partners, LP, International Power America, Inc., LS Power Associates, LP, Luminant Energy, NextEra Energy Resources, PSEG TX, LP, Shell Energy North America (US), and Topaz Power Management, LP; Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail LLC (TXU Energy). No public hearing on the amendments was requested.

Austin Energy supported the commission's efforts to further articulate its authority over ERCOT. TIEC supported improving the efficiency, transparency, and accountability of ERCOT, through commission oversight. The Oncor Cities supported the commission's objective in the amendments, but addressed several instances in which they asserted that the affected rules could be enhanced, in addition to the amendments. TCPA supported the portions of the amendments that would update the rules, eliminate duplication, or clarify the rules. It expressed deep concern, however, with amendments that would substitute the commission's judgment for that of ERCOT's governing board and management, excessively circumscribe ERCOT's ability to manage its responsibilities, or increase ERCOT's credit risk. TCPA expressed the view that it is important for ERCOT to have the authority and flexibility to manage its own internal affairs, so that it can attract and retain the talent needed to manage the grid and operate its markets.

Preamble Question Concerning Setting of the Administrative Fee

In the preamble to the proposed amendments, the commission posed the question of whether it would be appropriate for the commission to adopt a change in the way the ERCOT administrative fee is set, consistent with the recommendation of the Sunset Advisory Commission, in connection with the adoption of the amendments. Several commenters responded to the preamble question concerning the possibility of changing how the ERCOT administrative fee is set. TIEC argued that there are significant questions that need to be answered before the commission adopts a rule requiring a change in how the fees to cover ERCOT costs are charged. TXU Energy urged the commission to retain the current method for changing the administrative fee, asserting that certainty in the level of the fee is important for retail providers. ERCOT suggested that the commission not adopt changes in the way that the fee is set, because this is an issue that the Sunset Advisory Commission raised for action by the Legislature. ERCOT stated that the Legislature might adopt a different solution than what the commission has proposed under this rule, so it would make more sense to wait until the Legislature meets and considers the Sunset issues. ERCOT also stated that the commission has previously expressed a preference for considering changes in the fee in connection with a request to increase the fee. TCPA recommended that this issue not be addressed now, but rather after the legislative session and in the context of a more specific proposal.

Commission Response

The commission declines to adopt a change to the manner in which the ERCOT administrative fee is set at this time, because the Legislature may take action on this issue during the current legislative session.

Section 25.361

ERCOT suggested that, to avoid confusion, instead of the term in proposed §25.361(a), "ERCOT rule," the term "ERCOT Protocols" should be used to refer to ERCOT's market rules and operating guides, and that the governance rules should be referred to as "ERCOT corporate governance documents." It made this suggestion to avoid confusion and because, in its view, different requirements may be appropriate for governance documents and market and operating rules.

ERCOT suggested that the statement of its functions in §25.361(b) be updated to refer to its obligations under 2005 amendments to the Federal Power Act and that other changes be made to reflect current operations and procedures. ERCOT suggested that proposed §25.361(c), which addresses commercial functions, not be adopted, because it is confusing and because ERCOT does not perform commercial functions.

Commission Response

The commission disagrees with ERCOT that use of "ERCOT Protocols" would be less confusing than the term "ERCOT rules." The commission believes that as long as the term used in the rule is clearly defined, it should not engender confusion. The

commission has not changed §25.361(a) to exclude a statement of general policy relating to the organization or governance of ERCOT from the definition of "ERCOT rule" but concludes that the provisions relating to review of statements of general policy relating to the organization and governance should essentially be the same as the provisions relating to the review of other ERCOT rules. The commission has deleted the current §25.361(c), which referred to commercial functions, because the commission agrees that ERCOT does not perform commercial functions. The commission also has incorporated ERCOT's proposed changes to reflect current operations and procedures, but has elected not to modify the rule to add a reference to ERCOT's compliance with federal law, including NERC standards. The commission concludes that it is not appropriate to address ERCOT's obligations under federal law in this rule.

Section 25.362

TIEC and Oncor Cities urged the commission to retain a provision in current rules that makes it clear that commission rules take precedence over ERCOT protocols. The Oncor Cities supported the commission's intent to strengthen its oversight of ERCOT's operating practices, procedures, and governance, but argued that the rule should make it clear that the commission's review of these matters will afford interested persons an opportunity to participate, so that the review would be conducted through a rulemaking proceeding or contested case. ERCOT suggested that proposed §25.362(c) be clarified with respect to whether an interested person could appeal the decision of the ERCOT governing board to amend its governing documents, if the documents have been amended in response to a commission order. TCPA argued that the proposal to permit the commission to review ERCOT governance documents was unwarranted and unnecessary and could lead to a large number of contested cases involving provisions of these documents. TCPA stated that the Oncor Cities had suggested several instances in which the commission should make it clear that the review of ERCOT actions contemplated in the rules should be done through contested cases. TCPA opposed the extensive review of ERCOT actions through contested cases, emphasizing the cost that would be involved in such reviews and the potential for disruption of ERCOT operations. TCPA supported ERCOT's suggestion that the review process in §22.251 (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct) be used for commission review of ERCOT decisions. ERCOT suggested other clarifications to the provisions of the rule relating to appeals of ERCOT decisions. TCPA supported a provision stating that the independent market monitor and the commission's reliability monitor could comment on proposed ERCOT rule changes, but it urged that this provision recite that such comments are encouraged because of the independent perspective of these entities.

The Oncor Cities opposed the repeal of provisions of current rules that specify how requests by members of the public for ERCOT documents in the possession of the commission are processed. The Oncor Cities expressed the view that predictability in the handling of such requests is important. The Oncor Cities also requested that the rule make it clear that ERCOT information is to be accessible to the public unless it is protected by law, protocols, or a commission rule or order. ERCOT suggested that §25.362(e) be modified to make it clear that ERCOT would be required to provide information to any commissioner making a request for information.

Commission Response

The current rule includes a provision that commission rules take precedence over the ERCOT protocols, and the commission concludes that, in view of its statutory obligation to oversee the management and operation of ERCOT, such a provision should be retained. Concerning the comments about commission review of ERCOT governance documents, the commission concludes that the rule should make it clear that the scope of its oversight includes the review of ERCOT's articles of incorporation and by-laws on the application of an interested person. Historically, there have not been a large number of requests for review of ERCOT rules or decisions. The rule provides that an application for review of an ERCOT decision shall be processed in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). In response to ERCOT's comment, it is unnecessary to expressly state whether an interested person may appeal the decision of the ERCOT governing board to amend its governing documents, if the documents have been amended in response to a commission order, because the rule clearly permits a review in such circumstances. Even where the change in the governing documents has been made at the direction of the commission, a review may be appropriate to ensure that the changes are consistent with the commission order or rule that required the change.

The commission is adding a provision in subsection (c) that would obviate the governing board's review and approval of an audit that the commission directs ERCOT to carry out. This issue arose recently in connection with the commission's desire to conduct an audit of the cost over-runs associated with the implementation of a nodal congestion management system for the ERCOT market. In view of the extent of the commission's authority over the organization, it concludes that the board does not have the ability to decline to conduct an audit that the commission orders ERCOT to conduct.

In response to TCPA's comments that language should be added about the independent market monitor and the commission's reliability monitor having independent perspectives, the commission has not added such language because it is unnecessary. In response to ERCOT's comments, §25.362(e) has been changed to state that ERCOT is required to provide information to any commissioner or a commissioner's designee making a request for information. Concerning Oncor Cities' opposition to repeal of provisions that specify how requests by members of the public for ERCOT documents in the possession of the commission are processed, the commission has repealed some of these provisions because the Public Information Act addresses how such requests are processed. The commission is retaining provisions that permit the commission, in the absence of a request for information under the Public Information Act, to conduct a proceeding to review whether a document for which a claim of confidentiality has been asserted warrants that designation. The commission concludes that there may be circumstances in which a person has designated a document or other record as confidential when the circumstances do not warrant treating the document or record as confidential under Texas law. In these circumstances, the commission concludes that it has the authority to assess the facts and law and declassify the document or record, so that it may be made available to the public. The commission rules reflect the position that because ERCOT is performing a vital public service, its records should be available to the public, unless there is a legally-sufficient basis for classifying a record as confidential.

Conflict of Interest Provisions

The proposed amendment included a provision to disqualify a person from serving as an unaffiliated director of the governing board of ERCOT if the person was employed by or had in the last year been employed by a market participant that was eligible for membership on the governing board. TCPA opposed this provision to the extent that it did not apply to service as a representative of consumer interests on the board. TCPA did not oppose the concept of a disqualification of interested persons from serving as an unaffiliated director. TCPA asserted that consumer representatives other than the residential consumer representative should be subject to this disqualification, if it is adopted. Oncor Cities supported the proposed disqualification provision. They expressed the view that the disqualification provision is important in order to ensure the independence of the unaffiliated directors, but that the consumer representatives should be excluded from the disqualification, so that capable applicants would not be disqualified because of their employment with an electricity customer in the ERCOT region. TCPA opposed the provision that would permit an ERCOT director to be removed from office for a violation of a policy, as opposed to a rule or law. TCPA contended that the commission does not have the authority to either approve or disapprove directors. TCPA suggested that the provision that would allow the commission to review the appointment of a director should be modified, so that the only issues the commission could consider in conducting this review would be whether the organization and the person nominated as director meet the qualifications. TCPA also stated that the proposed provision that would not permit a director who has been nominated by the governing body to begin serving as a director until the commission approves the director's service is contrary to ERCOT bylaw amendments that were recently approved by the commission. TCPA recommended amending the proposed restriction on the service of an unaffiliated director that would preclude the director from representing a market participant at ERCOT following the director's tenure on the board. Under the proposed amendment, this restriction would apply for two years after a director ceased his service as a director; TCPA recommended reducing the duration of this restriction to one year.

TIEC raised questions about the process in proposed §25.362(h) by which the commission would review candidates for executive positions in ERCOT management, and noted that the public scrutiny involved in this review might dissuade some persons from seeking such positions. ERCOT suggested that the commission review be conducted in a manner that would preserve the confidentiality of the identity of an applicant. TCPA argued that the provision for the commission to review the appointments of ERCOT executives is beyond the commission's authority and unwarranted.

Commission Response

The commission has decided not to adopt an amendment that would disqualify a person from serving as an unaffiliated director who has been employed by a market participant. The commission believes that this provision would unnecessarily restrict the pool of otherwise qualified candidates. The commission agrees in part with TCPA's comments concerning the removal of a director for violating a "policy adopted under this subsection." This commission concludes that this provision, which applies to all board members, should set out a clear standard for removal, and it has, therefore, modified §25.362(g)(2)(B) and (3)(A) and (B) to refer to a violation of a *written* ERCOT policy. A violation of written ERCOT policy could constitute a major breach of a director's duties, and therefore be a basis for removal. The commission has also added violations of a commission rule or an applicable statute to the grounds for removal. The rules and statutes are written sources of policy that affect the organization and the markets it operates, and violations of them would be a serious matter that might warrant removal.

The commission disagrees with TCPA that it does not have the authority to review and approve or disapprove an individual's appointment to or removal from the governing board or to review candidates for executive positions in ERCOT management. Under PURA §39.151(d), the commission "has *complete* authority to oversee and investigate the organization's finances, budgets and operations." (Emphasis added.) Both ERCOT's governing board and management have direct authority over ERCOT's finance, budget, and operations and thus the commission has authority to review appointments to and removals from the governing board and candidates for ERCOT executive positions. This review is an important oversight tool that the commission believes should be used to ensure the efficiency and cost-effectiveness of the organization. In view of the particularly emphatic statement of the extent of the commission's authority over ERCOT in PURA §39.151(d), the commission is taking additional steps, described below, to strengthen its oversight of ERCOT. The commission does not believe, however, that the rules being adopted, even with these changes, represent an exercise of the full extent of the commission's authority over ERCOT under current law.

The commission does not agree with TCPA's suggestion to limit the scope of the commission's review of an ERCOT board appointment to an individual's qualifications to serve on the governing board or whether an organization is qualified to place a member on the board as a representative of a market sector. The commission concludes that it needs broad discretion to review appointments, in order to carry out its statutory responsibility in overseeing ERCOT. The commission is not adopting a requirement that directors appointed from the various market sectors be approved by the commission, but where the commission reviews the appointment of an unaffiliated director, it is important for the commission to review the appointee's qualifications to determine that the appointee has appropriate qualifications and does not have an inappropriate interest in a market participant.

Concerning TCPA's comment about a director who has been nominated by the governing body serving as a director prior to the commission's approval of the director's service, the commission is adopting this proposed amendment. While existing practice permits a person to serve prior to commission approval, the commission concludes that it should review a nominee's qualifications before the nominee begins serving, in order to ensure that the persons serving in this important role are qualified for the position and free from conflicts of interest that might affect the impartial performance of their duties. The commission is also making it clear that the same requirement for prior commission approval applies when a serving unaffiliated board member is reappointed to the board.

The commission agrees with TCPA's proposal to modify the provision that would prohibit an unaffiliated director from representing a market participant at ERCOT after the person ceases to serve as a member of the governing board. Instead of the two-year prohibition in the proposed rule, the commission is adopting a one-year prohibition. A two-year restriction would likely deter qualified persons seeking to serve on the ERCOT board to a greater extent than a one-year restriction. The commission believes that there are legitimate conflict-of-interest concerns with a former unaffiliated board member representing market partic-

ipants before the governing body and its committees and subcommittees that are appropriately addressed by such a prohibition, but that a one-year restriction better balances the goals of having a large pool of qualified applicants and avoiding conflicts of interest. One of the additional steps that the commission is taking to strengthen its oversight of ERCOT is to include a provision in the rule that permits the commission to remove an unaffiliated board member without cause. As noted above, the statute expresses quite emphatically that the commission is to oversee ERCOT, and the commission believes that there may be circumstances in which the removal of a board member without cause would be warranted. For example, if a board member is out of step with policies or preferences that have been articulated by the commission, it might be appropriate to remove the board member. The commission is also adopting a requirement that the compensation of unaffiliated board members and the chief executive officer be submitted to the commission for review. The commission concludes that, as a matter of good practice and effective oversight, the commission should review these compensation arrangements.

Concerning ERCOT executives, the commission determines that it is appropriate for it to approve only the selection of ERCOT's chief executive officer (CEO) and not the chief operating officer or vice-presidents. The commission believes that the CEO should have the discretion to select his or her management team, and that the selection of an effective management team may require the evaluation of intangible factors that the commission would have difficulty assessing. The commission is adding to this rule a prohibition against a member of the commission seeking the position of chief executive officer of ERCOT. The Sunset Advisory Commission made this recommendation to the Texas Legislature, and the commission concludes that this is an appropriate requirement to be implemented immediately.

The commission recognizes the concerns that TIEC has expressed about the value of confidentiality in hiring ERCOT executives, but it declines to adopt TIEC's proposal to require that the process for reviewing candidates for executive positions at ERCOT be done confidentially. The commission believes that the requirement that ERCOT provide information to the commissioners concerning the selection of a CEO will afford the commissioners the opportunity to monitor the selection of a CEO in a way that will not deter qualified candidates from being considered. Thus the objectives espoused by TIEC can be met without adopting this proposal.

Reports

In connection with proposed §25.362(i), relating to reports, TIEC urged the commission to require that the report on needed resources include within its scope all technologies that would be feasible to meet system energy needs. TIEC also urged caution in connection with reporting requirements, and recommended that the commission not adopt reporting requirements that are not necessary. The Oncor Cities urged the commission to retain a provision of the current rule that requires ERCOT to periodically file reports on its governance, budget, operations, and other responsibilities. ERCOT suggested that the commission adopt a more rational schedule for the reports required under this section. ERCOT suggested that proposed §25.362(l), relating to approval of a strategic plan, be modified to include criteria for modifying the strategic plan.

Commission Response

The commission largely agrees with ERCOT's proposed changes to the reporting requirements in §25.362. Section 25.362 has been modified to incorporate ERCOT's suggested changes in order to streamline the filing of the various reports that ERCOT is required to file with the commission. The commission further agrees with ERCOT that it should not file a summary of internal audit findings, but rather the actual reports themselves, to avoid any confusion or difference of opinion as to whether a summary accurately reflects the report and to reduce ERCOT's workload. The commission believes that the reports that are being required under these amendments do not include any that are not valuable to the commission in conducting its oversight of ERCOT, but that they will provide valuable information to the commission and public concerning ERCOT governance, budget, operations, and responsibilities, consistent with the Oncor Cities' suggestion. The commission also believes that the required reports are consistent with TIEC's concerns that the report on resources include all technologies.

The ERCOT region experienced rolling blackouts on February 2, 2011 as a result of the inability of a large number of electric generating plants to operate or start when requested to do so, and ERCOT failed to provide adequate advance notice about the problem or that the blackouts would begin. The commission is adding several planning and reporting requirements that should enhance ERCOT's ability to deal with operational contingencies, communicate more effectively with the commission, state and local government and the public, and facilitate the commission's oversight of ERCOT's contingency plans and operations. These requirements include the requirement to develop and submit to the commission a risk management plan to deal with significant operating risks, an emergency communications plan outlining how ERCOT will communicate information concerning an actual or impending large-scale disruption of electric service, and an assessment of the reliability of the ERCOT system during extremely hot or cold weather. Under current rules, ERCOT is required to communicate by telephone with the executive director of the commission during an event that threatens electric reliability. The commission is adding a requirement that ERCOT also communicate by telephone with the chairman of the commission or the chairman's designee during such an event. The commission is also adopting an additional financial reporting requirement, not directly related to the February event, to provide information on any derivative transactions ERCOT enters into. These additional requirements represent areas where the commission believes that additional information from ERCOT is essential to its oversight of the organization. Finally, the commission is directing ERCOT to submit a report on an annual basis assessing whether the governing board should continue to meet on a monthly basis or at some different interval. The commission concludes that, as a matter of good practice, ERCOT and the commission should consider whether meetings at a different interval would be more appropriate.

Section 25.363

TCPA argued that the commission does not have the authority to require that ERCOT submit its budget for commission review, and that the statutory provisions relating to an independent organization do not authorize the commission to micromanage ERCOT. TCPA argued that the following oversight proposals in proposed §25.263(a) are beyond the commission's authority, are unwarranted, and would impair ERCOT's flexibility: (1) the prohibition against implementing a budget without commission approval; (2) the prohibition against incurring expenses or capital outlays in excess of amounts approved by the commission; (3)

the prohibition against incurring new debt without commission approval; and (4) the prohibition against hiring employees in excess of any limit established by the commission. Austin Energy argued that the staffing limit in the proposed rule should not be adopted, because it would impair the organization's flexibility in meeting operating contingencies. TCPA argued that the requirements in proposed §25.363(d) for the review of the budget, borrowing, staffing, and strategic plan would create inordinate resource burdens for ERCOT and the commission.

TIEC supported the adoption of processes for annual review of the budget and for commission review of new debt, but it urged the commission to adopt processes that are as efficient as possible and avoid allowing the processes to be used by persons to air unrelated grievances. The Oncor Cities also supported strengthening of the oversight of the ERCOT budget, but they argued that the commission should make it clear that interested persons would have an opportunity to participate in any proceeding to review the budget, a change in the fees, or new debt.

ERCOT suggested that only the commission or commission staff should be able to initiate a review of the ERCOT budget through a contested case. ERCOT also urged that the user fees it changes or initiates be reviewed through an exception process, based on procedural rule 22.251, so that if no person requests a review of the user fee, it would go into effect following approval by the ERCOT governing board. ERCOT also requested that, if the commission adopts provisions for the review of the issuance of debt, it be permitted to use any additional indebtedness authorized by the commission. Under the process requested by ERCOT, the initial issuance of debt or consummation of a credit agreement would require commission review, but ERCOT's draw on a line of credit that the commission has approved would not require additional approval. ERCOT requested that, if the commission adopts a staffing limit, it be permitted to exceed the limit in exigent circumstances. ERCOT also suggested that the list of the functions that are required to be performed need not be included in this section.

The Oncor Cities opposed the repeal of the requirement in current rules that a test year be used as the baseline for a budget that is subject to commission review. ERCOT supported the repeal of the use of a historical or future test year, arguing that the review of its budget should be based on the costs of performing its functions during the budget year.

Commission Response

The commission disagrees with TCPA's position that the commission does not have the authority to approve ERCOT's budget, expenses, or capital outlays in excess of predetermined limits, the issuance of debt, and staffing limits. PURA §39.151(d) provides the commission with "*complete* authority to oversee and investigate the organization's finances, budgets and operations" of ERCOT. (Emphasis added.) ERCOT's budget, expenses and capital outlays and ability to issue debt are clearly related to either or both ERCOT's finances and budget. The proposed staffing restrictions are related to the budget and operations. PURA permits the commission "complete" authority over these areas and hence it has the authority to adopt the proposed rule amendments. The commission concludes that additional control of ERCOT expenditures is warranted. Accordingly, the commission is adopting these proposed amendments with the exception of the amendment related to staffing limits. The commission believes that adopting a staffing limit would unnecessarily restrict ERCOT in adapting to operating contingencies. The commission believes that TCPA's fears of commission micromanagement of ERCOT and claims of inordinate burdens on commission and ERCOT resources are not well founded, and that the additional review that is being adopted is consistent with the level of oversight contemplated by PURA §39.151. Because most of the reviews will occur on an annual basis, the burden on the commission and ERCOT should not be excessive. The commission is also adopting the provision suggested by ERCOT for the review of user fees based on P.U.C. Proc. R. §22.251. User fees are a significantly smaller source of revenue than the system administrative fee, and the commission agrees that a streamlined process for putting changes in user fees into effect is appropriate.

The commission believes, as suggested by ERCOT, that a request for commission approval of its expenses and capital outlays should not be based on a historical or future test year data. The rule, instead, bases approval of the budget on the costs of performing the functions required by law. The rule establishes costs that may be recovered and costs that are prohibited and requires ERCOT to establish a system of accounts that is consistent with the rule. In view of these controls and the requirement that ERCOT file quarterly financial reports with the commission, the commission concludes that the rule will afford the commission adequate means to review the ERCOT budget and will afford interested persons an effective opportunity to participate in proceedings to amend the budget or administrative fee. The commission has deleted the list of functions from this section, because they are described in more detail in another section of the rules.

All comments, including any not specifically referred to herein, were fully considered by the commission. In adopting these amendments, the commission makes other modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants; provides that an independent organization is directly responsible and accountable to the commission; provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties; and requires an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. In addition, this section permits the commission to prescribe a system of accounts for an independent organization; conduct audits of an independent organization relating to the performance of its functions or its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit; inspect an independent organization's facilities, records, and accounts; and assess administrative penalties against an independent organization. This section also authorizes the commission to approve and charge a reasonable and competitively neutral rate to cover the independent organization's costs. This section directs the commission to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits the commission to require an independent organization

to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.361. Electric Reliability Council of Texas (ERCOT).

(a) Applicability. This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 of this title (relating to Definitions), with respect to interactions with ERCOT. For the purpose of this section and §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance), an ERCOT rule is a market protocol, operating guide, market guide, or other procedure that constitutes a statement of general policy and that has an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system in the ERCOT region.

(b) Functions. ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall:

(1) administer, on a daily basis, the operational and market functions of the ERCOT system, including procuring and deploying ancillary services, scheduling resources and loads, and managing transmission congestion, as set forth in this chapter, commission orders, and ERCOT rules;

(2) administer settlement and billing for services provided by ERCOT, including assessing creditworthiness of market participants and establishing and enforcing reasonable security requirements in relation to their responsibilities under ERCOT rules;

(3) serve as the single point of contact for the initiation of transmission services;

(4) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;

(5) provide for non-discriminatory access to the transmission system, consistent with this chapter, commission orders, and ERCOT rules;

(6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;

(7) coordinate and schedule planned transmission facility outages;

(8) perform system screening security studies, with the assistance of affected TSPs;

(9) plan the ERCOT transmission system, in accordance with this section;

(10) establish and administer procedures for the registration of market participants;

(11) manage and operate the customer registration system;

(12) administer the renewable energy program, unless the commission designates a different person to administer the program;

(13) monitor generation planned outages;

(14) disseminate information relating to market operations, market prices, and the availability of services, in accordance with this chapter, commission orders, and the ERCOT rules;

(15) operate an electronic transmission information network; and

(16) perform any additional duties required under this chapter, commission orders, and ERCOT rules.

(c) Liability. ERCOT shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities.

(d) Planning. ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.

(1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.

(2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.

(3) ERCOT shall submit to the commission any revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the commission as to the content and implementation of its guidelines and procedures as it deems necessary.

(e) Information and coordination. Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this chapter, commission orders, and ERCOT rules. ERCOT shall maintain the confidentiality of competitively sensitive information and other protected information, as specified in §25.362 of this title. Providers of transmission and ancillary services shall maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

(f) Interconnection standards. ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.

(g) ERCOT administrative fee. ERCOT shall charge an administrative fee, and the fees it charges are subject to commission approval, in accordance with this chapter.

(h) Reports. Each TSP and transmission service customer in the ERCOT region shall on an annual basis provide to ERCOT historical information concerning peak loads and resources connected to the TSP's system.

(i) Anti-trust laws. The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.

(j) Decertification. ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title (relating to Decertification of an Independent Organization).

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) Purpose. This section provides standards for the governance of an independent organization within the ERCOT region.

(b) Application. This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under PURA §39.151.

(c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of ERCOT rules.

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of market protocols, operating guides, planning guides, and market guides, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.

(2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT.

(3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the commission. Commission-mandated audits, as contemplated in PURA §39.151(d) and (d-1), shall be funded by ERCOT and do not require approval by the governing board of ERCOT.

(4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.

(5) The commission shall process requests for review of a provision of ERCOT's articles of incorporation or by-laws, a new or amended ERCOT rule, or ERCOT decision in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection initiated by the commission, commission staff, or the Office of Public Utility Counsel is not subject to the alternative dispute resolution requirements in §22.251(c) of this title, (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), Section 21 of the Protocols (Process for Protocol Revision), or other applicable ERCOT procedures. In addition, the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in §22.251(d) of this title.

(d) Access to meetings. ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) Access to information. This subsection governs access to information held by ERCOT.

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operations, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT shall notify the requester of the expected delay and the anticipated date that the information may be available. ERCOT's procedures regarding access to records shall be consistent with this chapter and commission orders.

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules, except as otherwise provided in this subsection.

(B) ERCOT shall promptly respond to a request from the commission, a commissioner, a commissioner's designee, the commission executive director, or the executive director's designee for information that ERCOT collects, creates or maintains, in order to provide the commission access to information that the commission, a commissioner, a commissioner's designee, the executive director, or the executive director's designee determines is necessary to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.

(C) In the absence of a request for information under the Texas Public Information Act, Texas Government Code Annotated, the commission staff may seek to release information that the commission has in its possession or has access to that has been designated as Protected Information under ERCOT rules, and the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested-case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under law.

(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of the assertion.

(2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in the Texas Public Information Act.

(f) Conflicts of interest. ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) Qualifications, selection, and removal of members of the governing board. ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection or violates an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute; and

(B) Specify how decisions concerning the qualification of an individual or whether an individual has violated an ERCOT rule or written ERCOT policy or procedure adopted under this section, or commission rule, or applicable statute will be made.

(4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.

(5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board without cause. Compensation, per diem and travel reimbursements to be paid to unaffiliated members of the governing board shall be subject to commission review and approval.

(6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who serves as an unaffiliated member may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of one year after the person ceases to serve as a member of the governing board.

(h) Chief executive officer. The appointment of the chief executive officer of ERCOT is subject to commission approval. ERCOT shall notify the commissioners when a vacancy occurs for the chief executive officer. ERCOT shall provide information to the commissioners concerning the process for selecting a new chief executive officer, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. A person may not seek the position of the ERCOT chief executive officer while serving as a commissioner. Compensation to be paid to the ERCOT chief executive officer shall be subject to commission review and approval.

(i) Required reports and other information. ERCOT shall file with the commission the reports and provide the information required by this subsection.

(1) Annual report. ERCOT shall file an annual report with the commission, not later than 120 days after the end of the year. The annual report shall include:

(A) A strategic plan, including a statement of the mission and vision of the organization, a summary of the industry environment in which it operates, a description of the major challenges it faces, and key strategies it intends to employ to perform its functions and meet its challenges.

(B) A long-term organizational plan including:

(i) An overview of the major systems, including both hardware and software, operated by ERCOT, including descriptions of the functionality provided, estimates of remaining useful life, estimates of ongoing maintenance and upgrade costs, and evaluations of the performance of each system;

(ii) A description of major capital projects completed in the prior budget year and those expected to be completed in the following budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities or the benefits it would provide to market participants or consumers;

(iii) A schedule summarizing ERCOT's sources and uses of funds for a six-year period beginning with the last historic calendar year and projections for the next five calendar years;

(iv) Long-term goals for all ERCOT activities;

(v) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations during the current budget year; and

(vi) Any other information requested by the commission.

(C) Financial information including:

(i) A copy of an independent audit of ERCOT's financial statements for the report year;

(ii) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year, a schedule showing the variance between actual and budgeted revenues and costs, and a

schedule showing the assets and liabilities (including level and types of debt);

(iii) The annual board-approved budget;

(iv) A description of any derivative transactions entered into by ERCOT; and

(v) Any other financial information requested by the commission.

(2) Operations report and plan. No later than January 15 of each year, ERCOT shall file an operations report and plan. The commission may initiate a review of the plan, at its discretion. The report and plan shall contain the following information:

(A) A copy of an independent audit of ERCOT's market operation for the report year;

(B) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT;

(C) A summary of key reliability statistics;

(D) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves;

(E) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity markets, managing transmission congestion, transmission planning and interconnection of new generating plants, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;

(F) A risk management plan that identifies any significant risks to system reliability, the operation of ERCOT's energy and capacity markets, its management of transmission congestion, and any other risks that would significantly disrupt the sale and delivery of electricity within the ERCOT region, and the measures that might be taken to mitigate such risks;

(G) An emergency communications plan that describes how ERCOT will communicate to market participants, government officials, and the public information concerning actual or likely disruptions of electric service that would affect a significant number of customers;

(H) An assessment of the reliability and adequacy of the ERCOT system during extremely cold or extremely hot weather conditions, including information regarding steps to be taken by power generation companies and utilities to prepare their assets for extreme weather events; and

(I) Identification of existing and potential transmission constraints, and the need for additional transmission, generation or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins, alternatives for meeting system needs, and recommendations for meeting system needs.

(3) Quarterly reports. ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:

(A) Any internal audit reports that were produced during the reporting quarter;

(B) A report on performance measures, as prescribed by the commission;

(C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

(i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;

(ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;

(iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(4) Emergency reports. If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the chairman of the commission, or the chairman's designee, and the executive director of the commission, or the executive director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the executive director specifies, in writing, that the report may be delayed. The executive director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report.

(5) Meeting Periodicity Report. Beginning with the effective date of this section, ERCOT shall recommend annually to the commission the periodicity of governing board meetings. ERCOT's recommendation shall be based on an examination of the frequency of meetings conducted by similar organizations and shall include an estimate of the costs associated with meeting more frequently than once per quarter.

(j) Compliance with rules or orders. ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, any provision of this chapter, or a commission order. If ERCOT fails to comply with PURA, any provision of this chapter, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

(6) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

(k) Priority of commission rules. This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.

§25.363. ERCOT Budget and Fees.

(a) Scope. This section applies to the budget of and all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under PURA §39.151.

(1) A fee or rate that was in effect on the effective date of this section shall remain in effect and shall not be changed, except as provided in this section.

(2) ERCOT shall not implement any new or modified budget, rate or fee without commission approval, except as otherwise provided by this section.

(3) ERCOT shall not incur expenses or capital outlays in any year that exceed the amounts approved by the commission, except in the case of an emergency that impairs its ability to conduct is functions.

(4) ERCOT shall not incur debt or defer scheduled principal repayments of debt without commission approval. ERCOT shall seek approval of any loan or agreement to provide a line of credit from a bank or other institution, the issuance of bonds or notes, and any arrangements that would permit it to issue bonds or permit the issuance of bonds on its behalf at a later date. This paragraph does not require approval of a contract to lease equipment or other property used in normal operations or approval of a loan or draw on an existing line of credit or other credit arrangement that has been approved by the commission.

(b) System of accounts and reporting. For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan prescribed by §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance). The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each major activity conducted by ERCOT. ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

(c) Allowable expenses. Expenses and capital outlays in the budget shall be based upon ERCOT's expected cost of performing its required functions as described in PURA §39.151(a) and this chapter. To determine whether the costs are reasonable and necessary, the commission may consider the budget justification provided by ERCOT, the ERCOT long-term operations plan, costs incurred by market participants and other independent system operators for similar activities, costs incurred in prior years, capital projects identified in the budget, and to any other information and data considered appropriate by the commission.

(1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151 and this chapter shall be included in allowable expenses.

(2) Allowable expenses, to the extent they are reasonable and necessary may include, but are not limited to the following general categories:

(A) Operating expenses, which include salaries and related benefits, direct advertising for the specific purpose of recruiting employees, legal and consulting services, hardware and software maintenance and licensing, insurance, employee training and travel, and depreciation;

(B) Facility and equipment costs, and other long-lived investments;

(C) Debt service (interest plus principal reduction) and other reasonable and necessary costs of capital to fund investments in property and facilities, and other capital expenditures that are used and useful in performing the functions of an independent organization;

(D) Expenses associated with fees and dues charged by organizations setting electric or energy business practices and communications standards *(e.g.,* North American Electric Reliability Council, North American Energy Standards Board, and ISO/RTO Council) of which ERCOT is a member; and

(E) Actual expenditures for public service announcements and community education efforts, provided that the total sum of all such items allowed in the cost of service shall not exceed 0.05% of the annual ERCOT revenue requirement or $50,000, whichever is less.

(3) The following are not allowable as a component of expenses:

(A) Legislative advocacy expenses, whether made directly or indirectly;

(B) Funds expended in support of political candidates, movements or causes;

(C) Funds expended promoting religious causes;

(D) Funds expended in support of or in acquiring membership in social, recreational, or fraternal clubs or organizations;

(E) Funds expended for advertising, marketing, or other promotions, which includes, but is not limited to:

(i) promotional goods;

(ii) efforts to increase name recognition;

(iii) radio, television, newspaper or other media advertising; except as otherwise expressly authorized; and

(F) Any expenditure found by the commission to be unreasonable, unnecessary, not in the public interest, or not sufficiently supported by the fee-filing package and accompanying evidence.

(d) Commission review and action. The ERCOT annual budget and any change in the system administration fee are subject to review by the commission. Prior to the submission of a proposed budget or change in the system administration fee to the governing board for its approval, ERCOT shall consult with commission staff designated by the executive director in connection with the development of the budget and shall provide to the staff information concerning budget

strategies, staffing requirements, categories of expenses, capital outlays, exceptional expenses and capital items, and proposals to incur additional debt. ERCOT shall file with the commission its board-approved budget, budget strategies, and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, reject or modify the budget and budget strategies.

(e) Performance measures. The commission may adopt performance measures to assess ERCOT's fiscal and operating performance.

(f) User Fees. ERCOT may charge reasonable user fees for services provided by ERCOT to any market participant or other entity. User fees do not include the system administration fee and the ERCOT nodal implementation surcharge. A new or revised user fee may be approved by the ERCOT governing board, without the filing of an application under §22.252 of this title (relating to Approval of ERCOT Fees and Rates). Any affected entity, including the commission staff and the public counsel, may file an appeal of the establishment or revision of a user fee, in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct), except that the provisions of §22.251(c) of this title (which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), or Section 21 of the Protocols (Process for Protocol Revision), or other Applicable ERCOT Procedures) shall not apply.

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 March 2, 2011.

TRD-201100866
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 22, 2011
Proposal publication date: September 3, 2010
For further information, please call: (512) 936-7223

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 18. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT

34 TAC §18.2

The Comptroller of Public Accounts adopts the amendment to §18.2, concerning trust account distributions, without changes to the proposed text as published in the January 28, 2011, issue of the *Texas Register* (36 TexReg 402).

The amendment will clarify the distribution formula to allow the committee some discretion in the calculation of the distributions in order to provide for predictable, stable, and sustainable distributions over time while maintaining the inflation adjusted value of the corpus.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, §403.1041(h), which authorizes the comptroller to adopt rules related to the management and implementation of the trust account.

The amendment implements Government Code, §403.1041(h).

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 March 4, 2011.

TRD-201100878
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: March 24, 2011
Proposal publication date: January 28, 2011
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.7, §23.8

The Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §23.7 and §23.8, concerning TRS' Code of Ethics for Contractors (Code of Ethics or Code) and related materials, without changes to the proposed text as published in the January 14, 2011, issue of the *Texas Register* (36 TexReg 124).

Section 23.7 adopts by reference the Code of Ethics for Contractors (formerly the Code of Ethics for Consultants, Agents, Financial Providers and Brokers) and requires compliance with it. Section 825.212(e) of the Government Code requires the Board of Trustees (board) of TRS by rule to adopt standards of conduct applicable to TRS consultants and advisors who likely will be paid over $10,000 in a year or who provide important investment advice. In September 2010, the board adopted a revised Code of Ethics for Contractors. Contractors are Agents, Brokers, Consultants, Financial Advisors, and Financial Services Providers, as defined by the Code. The adopted amendments to §23.7 update the version of the Code adopted by reference and would state that TRS has filed a copy of the latest version of the Code with the Office of the Secretary of State, such filing being in accordance with that office's procedures. The amended rule still explains how to obtain a copy of the Code from TRS. Other adopted amendments clarify references to the revised version of the Code being adopted by reference and, as applicable, make such references consistent with wording in the related rule, §23.8, which concerns ancillary reporting materials used in implementing the Code. The adopted amendments make no changes to the Code itself.

Section 23.8 adopts by reference the Expenditure Reporting Memorandum (reporting memorandum) and Expenditure Reporting Form for Contractors (reporting form) and requires Contractors to report expenditures made on behalf of any TRS trustee or employee. Section 825.212(g) of the Government

Code requires the board by rule to require consultants and advisors to the retirement system and brokers to file regularly with the system a report detailing any expenditure of more than $50 made on behalf of a trustee or employee of the system. In September 2010, the board adopted a revised reporting form. In November 2010, the executive director approved under the Code a revised reporting memorandum, which is addressed to Contractors. The adopted amendments to §23.8 do the following: (1) expressly include the statutorily required reporting of expenditures of more than $50, in addition to any other reporting requirement under the Code of Ethics; (2) adopt by reference the latest versions of the reporting memorandum and reporting form; and (3) state that copies of the latest versions of the memorandum and form have been filed with the Office of the Secretary of State. The amended rule continues to explain how copies of the reporting memorandum and form may be obtained from TRS. Other minor adopted amendments clarify references to the revised versions of the reporting memorandum and form and, as applicable, make such references consistent with the wording used in connection with the updated Code adopted by reference in §23.7. The adopted amendments make no changes to the reporting memorandum or form.

No comments were received concerning the proposed amendments.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement §825.212(e) and (g) of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 3, 2011.

TRD-201100876
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: March 23, 2011
Proposal publication date: January 14, 2011
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §§25.1, 25.4, 25.6

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.4, concerning substitute service, and §25.6, concerning part-time or temporary employment service, without changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9835). The board adopts amendments to §25.1, concerning full-time service, with changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9835).

The adopted amendments result from TRS' four-year rule review of 34 TAC Chapter 25, concerning membership credit, and Subchapter A of that chapter, concerning service eligible for membership. Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. The subchapter also addresses how other types of employment in positions unique to education, such as substitutes and school bus drivers, may be considered eligible for membership in TRS.

Section 25.1 concerns the determination of service eligible for membership. The adopted amendments to the section make a small but significant change regarding the minimum amount of employment that will qualify an employee of a TRS-covered employer for membership. Section 25.1 establishes requirements for membership using language based largely on the statutory definition of "employee" in §821.001(6) of the Government Code. Accordingly, the rule requires a person to be employed, as determined by the system, on other than a temporary basis by an employer for at least one-half time at a regular rate of pay comparable to that of other persons employed in similar positions to be eligible for TRS membership. If a person is employed in a position for which a full-time equivalent position exists, then the person must be employed for one-half or more of the full-time load to be eligible for TRS membership. The rule defines one-half time employment and addresses how to determine one-half time if there is no full-time equivalent position. Under the amended rule, if no full-time equivalent position exists, the minimum number of hours required per week that will qualify *any* position for TRS membership is 15, regardless of whether it is a certified, non-certified, or bus driver position. The rule formerly distinguished between certified and non-certified positions and did not apply to bus drivers. The adopted changes likely impact eligibility for bus drivers. In the past, bus drivers could establish eligibility by driving a minimum of one route per day provided the route complied with Texas Education Agency (TEA) guidelines. The amended rule imposes a minimum of 15 hours per week on bus drivers as well but eliminates the requirement for having a route that complies with TEA guidelines. The foregoing amendments to §25.1 regarding the minimum amount of employment required are adopted with changes to the published text of the proposed rule to indicate that the amendments take effect at the start of the 2011-2012 school year and that the corresponding requirements under the former rule apply until then. New subsection (f)(3) of §25.1 incorporates related provisions of recently repealed 34 TAC §25.2 concerning bus drivers to show that they also continue to apply until the start of the 2011-2012 school year. The repeal of §25.2 is published elsewhere in this issue of the *Texas Register.*

Another amendment to §25.1 removes the requirement that the employment criteria be met in one school year. TRS' experience with the previous rule had been that reporting entities did not report to TRS employees hired late in a school year when the duration of their employment was insufficient to establish a year of service *credit* before the school year ended, even though their position qualified them for *membership* in TRS. The related amendment clarifies that membership eligibility is determined based on the position, not on the employment date. That change is consistent with the statutory requirement for mandatory membership when a person is employed in an eligible position and also makes it more likely that TRS will receive all expected member and state contributions to support the liabilities of the system.

Section 25.4 addresses how a person employed as a substitute may be considered eligible for membership in TRS. The

adopted amendments remove the requirement that substitute service credit, once it is verified, must be purchased before any benefit is paid by TRS. The amended rule provides that a member must purchase the substitute service before it is used in calculating the amount of benefits paid by TRS and before it is used to determine eligibility for benefits. The adopted changes also include language clarifying that substitute service established by paying required amounts is credited in the year it was rendered, not the year it was purchased.

Section 25.6 addresses part-time or temporary employment. TRS amends the wording of §25.6 to be consistent with the language of TRS rule 34 TAC §25.1 regarding the type of employment required to establish membership eligibility and to clarify that the amount and duration of the employment in question determines eligibility, not the date of employment.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: §§821.001(6), 822.001, 823.002, and 825.403 of the Government Code.

§25.1. Full-time Service.

(a) Employment of a person by a TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment is for 20 hours or more for each week and for four and one-half months or more.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) If there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) For school years prior to the 2011-2012 school year:

(1) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(3) Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership. A person will be considered regularly employed as a bus driver if his or her customary employment requires driving at least one such route per day.

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment that is expected to continue for less than four and one-half months is temporary employment and is not eligible for membership.

(h) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

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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Ronnie G. Jung
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For further information, please call: (512) 542-6438

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34 TAC §25.2

The Teacher Retirement System of Texas (TRS or system) adopts the repeal of §25.2, concerning service eligible for TRS membership by school bus drivers, without changes to the proposal as published in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9837).

The adopted repeal arises from TRS' four-year rule review of Chapter 25, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. The subchapter also addresses how other types of employment in positions unique to the public education such as substitutes and bus drivers may be considered eligible for membership in TRS.

Before repeal, §25.2 established minimum requirements for membership eligibility for bus drivers. TRS adopts the repeal of the section because adopted amendments to TRS rule 34 TAC §25.1 concerning full-time service negate the need for a special rule devoted to bus drivers. The adopted amendments to §25.1, which are published elsewhere in this issue of the *Texas Register,* require a person, including a bus driver, to work a minimum of 15 hours per week for a TRS covered employer to qualify for TRS membership. Amended §25.1 provides that the new minimum standard based on hours worked per week for bus drivers and other positions under the rule will be imple-

mented beginning with the 2011-2012 school year. Specifically regarding bus drivers, amended §25.1 continues the provisions of §25.2 through the end of the 2010-2011 as that section existed before repeal.

No comments on the proposal were received.

Statutory Authority: The repeal is adopted under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: §§821.001(6), 822.001, 823.002, and 825.403 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. COMPENSATION

34 TAC §§25.21, 25.24, 25.25, 25.28, 25.31, 25.35

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.21, concerning compensation subject to deposit and credit, §25.25, concerning required deposits, §25.28, concerning payroll report dates, §25.31, concerning percentage limits on compensation increases, and §25.35 concerning employer payments for new members, without changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9838). The board adopts amendments to 34 TAC §25.24, concerning performance pay, with changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9838).

The adopted amendments result from TRS' four-year rule review of 34 TAC Chapter 25, concerning membership credit, and Subchapter B of that chapter, concerning compensation, which addresses various types of compensation typically paid to public education employees and whether such compensation is creditable for TRS benefit calculation purposes.

The public comment period on the proposals began November 5, 2010, and ended December 6, 2010. In addition, on December 9, 2010, the board and the board's policy committee held public meetings at which the public was given the opportunity to comment on the published proposals. A summary of any public comments received and TRS' responses to them are set out below at the end of the amended section to which they apply.

Section 25.21 generally concerns compensation subject to deposit and credit. The adopted amendments to this section address types of compensation that have been reported incorrectly to TRS as creditable compensation or have been under-reported to TRS. Among those, the types of compensation that are specifically excluded as creditable compensation in the amendments include the following payments: cell phone allowances; signing and retention bonuses; payments under Chapter 21, Subchapter O (§§21.701 - 21.707) of the Education Code that do not represent payments for service rendered by the member; and money paid pursuant to a settlement agreement that does not represent salary as that term is defined for TRS purposes. Another adopted amendment clarifies that differential pay of less than 50% of the compensation for a full-time position should not be reported to TRS. Differential pay is identified as pay to a member who leaves for military duty and represents all or some of the difference in the pay the member receives for military duty and the pay the member would have received in the TRS-covered position. TRS received no comments in response to the publication of the proposed rule.

Section 25.24 addresses performance pay. The adopted amendments change the period in which TRS will credit performance pay. TRS has been crediting performance pay in the year in which it was earned. That method of crediting performance pay often required TRS to manually adjust pay reported and related retirement contributions made after the end of the year in which it was earned to retroactively include the pay in the year it was earned. This policy added considerable work and processing, especially when performance pay was received after retirement. The adopted amendment changes the policy to credit performance pay in the year it is paid and to reject TRS contributions paid after retirement. Crediting the performance pay in the year it is paid, rather than the year it is earned, results in the member receiving credit each year for performance pay and encourages TRS-covered employers to distribute performance pay in a timely manner to employees who are retiring. In response to the publication of the proposed amendments to §25.24, TRS received comments from one interested party, the Texas Classroom Teachers Association (TCTA).

Comment: TCTA opposes the changes in §25.24(e) because they might limit the amount of creditable compensation or service some TRS members might have established under the unamended rule. TCTA comments that the proposed amendments provided no exception for payments made after retirement benefits had begun. TCTA comments that such an exception is necessary to comply with the law. TCTA suggests that the proposed amendments might conflict with §822.201(b)(9) of the Government Code, which provides that certain amounts received under Subchapter O of Chapter 21 of the Education Code or §21.458 of the Education Code are defined as "salary and wages" under §822.201(a) of the Government Code for purposes of determining member contributions and benefit computations.

System Response: TRS disagrees with TCTA's comments arguing that amended §25.24(e) should not be adopted. The proposed amendments to §25.24 generally enhance fairness, actuarial soundness, reasonableness, and administrative efficiency in the reporting and determination of the amount of creditable compensation or service established by TRS members--benefits that outweigh the possible detriment to a relatively small number of members--and do not conflict with any applicable statute. The adopted amendments do not exclude performance pay from creditable compensation but rather change the year in which the compensation is credited. Generally, this change should not result in loss of credit for the compensation for a member who receives the pay each year. It is reasonable to assume that many if not all school districts will adjust the way they pay out performance pay to reflect the amended rule. It is possible that an individual retiring member who receives the pay after retirement benefits have commenced would not receive the benefit

of the performance pay. The adopted amendments would not exclude performance payments "after the employee's date of retirement" but would exclude such payments "after the member has begun receiving retirement benefits." That distinction is an important one that currently benefits many May retirees who delay receipt of the first annuity payment until September after all remaining salary has been paid. Further, amended §25.24 provides consistent treatment of all compensation received after the member has begun receiving retirement benefits. Other types of otherwise creditable compensation received after the retiree has begun receiving retirement benefits are excluded from benefit calculations under 34 TAC §25.45, which concerns verification of unreported compensation or service (adopted amendments to §25.45 are published elsewhere in this issue of the *Texas Register).* No statutory basis exists for treating performance pay differently than other types of creditable compensation. TRS agrees that the statute cited by TCTA, §822.201(b)(9) of the Government Code, provides that amounts received for service under relevant parts of Chapter 21, Subchapter O, or §21.458 of the Education Code are creditable. However, the statute does not address when those payments are received. Section 822.201(e)(6) of the Government Code provides that performance pay must "satisfy any other requirements adopted by the retirement system." Nothing in the law requires that performance pay be credited after the member has retired and begun receiving retirement benefits. Consequently, amended §25.24 complies with §822.201 of the Government Code when read in its entirety and may exclude performance pay--including compensation received under Chapter 21, Subchapter O, or §21.458 of the Education Code--after the member has begun receiving retirement benefits. The adopted amendments to §21.24 are necessary to ensure consistent treatment of all otherwise creditable compensation and to promote administrative efficiency, accuracy, and implementation of future web-enabled services to members. To facilitate an orderly transition in implementing the new method for determining the period for which performance pay will be credited, the board adopts amended §25.24 with changes to the published text of the proposed rule to indicate that the amendments take effect at the start of the 2011-2012 school year and that the corresponding provisions under the former rule apply until then.

Section 25.25 concerns required deposits by TRS members and their employers. The adopted amendments clarify that contributions must be made on salary received from employment that would not qualify for membership on its own but when combined in the same school year with other eligible employment, results in qualifying employment. TRS received no comments in response to the publication of the proposed rule.

Section 25.28 concerns payroll report dates. Amended §25.28(e) includes new language that requires the employer to obtain a written determination from TRS regarding whether amounts paid pursuant to a settlement agreement are creditable for TRS purposes before reporting the amounts paid and submitting deposits on behalf of the member to TRS. That adopted amendment will encourage members and their attorneys to contact TRS before signing a settlement agreement so that the agreement can be drafted in such a way that the document clearly establishes that the compensation is creditable for TRS purposes or that the member is on notice that the compensation is not creditable and can use that information in negotiating a settlement with the employer. TRS received no comments in response to the publication of the proposed rule.

Section 25.31 concerns percentage limits on compensation increases. The adopted amendments address how the percentage limits will be determined for non-grandfathered members (i.e., by using a five-year salary average instead of a three-year salary average) and to eliminate the exceptions in subsection (f) of §25.31 for compensation received in the 2011-2012 school year and after. This rule was adopted pursuant to a statutory mandate to help prevent salary "spikes" in the years just prior to retirement. Salary spiking can be harmful to the fund and result in disproportionate liability based on the last few years of salary. The exceptions to the percentage limit were the result of a compromise reached by the board but have resulted in additional workload for staff caused by manual adjustments and research required to properly administer the exceptions. Automation of certain processes is difficult as a result. Further, salary "spiking" harms the fund without regard to the reason for the spiking. To fully protect the fund and to allow for more efficient administration of the percentage limits on compensation increases, the adopted amendments eliminate the exceptions after the 2010-2011 school year. In response to the publication of the proposed amendments to §25.31, TRS received comments from TCTA.

Comment: TCTA opposes the addition of new subsection (g) in §25.31 making all compensation increases, without regard to the reason for the increase, subject to the amended limits in the rule beginning with the 2011-2012 school year. TCTA asserts that the law requiring TRS to establish limits, §825.110 of the Government Code, was designed to prevent the practice of salary spiking, and that the former rules provided reasonable exceptions to recognize increases that were due to actual changes in employment or duties. TCTA states that, while the legislature gave TRS the authority §825.110 to adopt rules that include a percentage limitation on salary increases subject to credit and deposit, that authority was given in conjunction with a directive to exclude conversions of non-allowable benefits. TCTA also comments that the 10% or $10,000 limit may not adequately address situations in which, for example, a teacher becomes employed in an administrative position or a teacher's aide obtains certification and becomes a teacher. TCTA asserts that such salary increases are not in violation of the law, and the unamended rule providing an exception for such situations is reasonable and fair.

System Response: TRS disagrees with TCTA's comments arguing that §25.31(g) should not be adopted. The exceptions in the former rule allowed significant increases in salary for a large number of members and did not protect the fund against spiking. Spiking harms the fund when so many exceptions to the limits are allowed that they swallow the rule. Consequently, disregarding the reason for spiking while setting reasonable limits on compensation increases, as amended §25.31 does, is the only way to effectively and efficiently administer the law requiring TRS to adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment, §825.110 of the Government Code. TRS disagrees with TCTA's characterization of §825.110 to the extent that it implies the statute limits TRS to adopting rules to exclude only spikes in compensation due to conversions of non-allowable benefits. The statute plainly states that TRS shall adopt rules imposing a percentage limitation on the amount of increases in annual compensation without confining that limitation to conversions of non-allowable benefits. Further, TRS states that the proposed amendments comply with the statutory directive to adopt rules that include a percentage limitation on the amount of increases,

and the statute does not require TRS to include in its rules exceptions for salary increases resulting from changes in duties or any other reason. Experience with the former rule reflects that its exceptions to the limit on increases impair the intended benefit of the rule. With regard to salary increases in the situations TCTA describes--i.e., a teacher becoming employed in an administrative position or a teacher's aide obtaining certification and becoming a teacher--TRS agrees that such increases do not violate the law, but TRS also states that not all salary that is authorized by law is creditable for TRS purposes.

Section 25.35 concerns employer payments for new members. The adopted amendments delete references to periods occurring in the past and that are no longer applicable. Those references to past periods can be confusing and are no longer necessary to administer the rule. TRS received no comments in response to the publication of the proposed rule.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and, with regard to amended §25.31, under §825.110 of the Government Code, which requires the board to adopt rules that include a percentage limit on increases in annual compensation.

Cross-Reference to Statute: The adopted amendments affect §821.001(4) and §822.201 of the Government Code.

§25.24. Performance Pay.

(a) Annual compensation includes performance pay earned under a total compensation plan specifically approved by vote of the governing board of an employer. Such approval must be reflected in the minutes of the governing board. Any employer reporting to the retirement system is considered a school district for the purposes of this section.

(b) For purposes of including performance pay as a part of annual compensation under this rule, a total compensation plan must describe all elements of compensation received by all employees of the employer.

(c) Performance pay is compensation for service as an employee in a Texas public educational institution that is paid under a valid employment agreement based upon a performance standard published in written documents adopted by the employer. The performance standard may be based on evaluations or goal achievement of the individual employee or of the group in which the individual belongs. Beginning on the first day of the 2011-2012 school year and thereafter, specific amounts of performance pay will be credited to the year in which the performance pay is paid. For school years prior to the 2011-2012 school year, specific amounts of performance pay will be credited to the year in which the standards establishing the right to the performance pay are met or in which the service occurred, whichever is earlier.

(d) An employer shall certify each year to the retirement system, by a date specified by the system on a form prescribed by TRS, whether it is providing performance pay under this section. A district that has properly made this certification shall report all qualifying performance pay as compensation and make appropriate deductions for member contributions unless the retirement system advises the employer that such pay does not qualify as performance pay under this rule. Employer shall maintain records that show it provides such pay for a period not less than 7 years after such pay is reported to the retirement system.

(e) Beginning on the first day of the 2011-2012 school year and thereafter, performance pay earned during the school year in which the member retires or any previous school year and paid after the member has begun receiving retirement benefits is not creditable by TRS and will not be used in any benefit calculation. For school years prior to the 2011-2012 school year, if performance pay earned during the school year in which the member retires is paid after the member has begun receiving retirement benefits, any benefit adjustment needed will be made effective the month following the month in which TRS receives the deposits for the performance pay, subject to any applicable limits under 26 United States Code §415.

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 C. UNREPORTED SERVICE OR COMPENSATION

34 TAC §25.41, §25.45

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.41, concerning deposits for unreported service or compensation, and §25.45, concerning verification of unreported compensation or service, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9643).

The adopted amendments result from TRS' four-year rule review of 34 TAC Chapter 25, concerning membership credit, and Subchapter C, concerning unreported service or compensation. Subchapter C establishes policies related to service or compensation a member's employer must report but did not.

Section 25.41 requires deposits for contributions that should have been made on previously unreported service or compensation to be paid before TRS will pay benefits to a member. The adopted amendment to §25.41 deletes subsection (c), which concerns the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The tax code limitations still apply, but recent amendments to TRS rules 34 TAC §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of subsection (c) in §25.41 will lessen redundancy.

Section 25.45 establishes policies and procedures for verification of unreported compensation or service. The adopted amendments to §25.45 clarify how unreported service or compensation must be verified to TRS and clarify that verification, salary reports, and deposits will not be accepted after the member has retired and received the first annuity payment.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments relate to the implementation of §825.403 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. MILITARY SERVICE

34 TAC §25.61, §25.66

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.61 and §25.66, concerning military service credit without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9644).

The adopted amendments result from TRS' four-year rule review of 34 TAC Chapter 25, concerning membership credit, and Subchapter E, concerning military service. Subchapter E establishes policies for an eligible member to purchase up to five years of military service credit in the system.

Section 25.61 concerns service credit for eligible military duty. The adopted amendments to §25.61 add language addressing the existing policy of the system not to permit the establishment of military service credit already established in another Texas public retirement system. The amended section also explains that, if TRS has inadvertently allowed a member to establish such service credit in the system, then TRS will make a refund, cancel the credit, and, when applicable, adjust benefit payments. Another adopted amendment adds language addressing retirement with joint service in the Employees Retirement System of Texas (ERS) pursuant to the TRS/ERS transfer rule under §25.113 of TRS' rules and Chapter 805 of the Government Code. The adopted amendment describes TRS' existing policy providing that a person who retires under the TRS/ERS transfer rule may not establish more than a total of five years of military service credit. Further, amended §25.61 no longer requires a member to purchase military service credit in chronological order starting with earliest year of eligible service; TRS generally allows a member to pay for the least expensive year first. The final adopted amendment to §25.61 deletes subsection (d), which relates to the Internal Revenue Code requirement that deposits must be paid in a manner consistent with the annual limitations on contributions from a member to the plan. The tax code limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of subsection (d) in §25.61 will eliminate redundancy.

Section 25.66 concerns the application process for military service credit. The adopted amendments to §25.66 make minor wording changes to clarify the types of service referred to in the section.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement provisions of Chapter 823, Subchapter D, of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

34 TAC §§25.71, 25.73 - 25.75, 25.77

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §§25.71, 25.73 - 25.75 and new §25.77, concerning service credit for eligible active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9645).

The adopted amendments result from TRS' four-year rule review of 34 TAC Chapter 25, concerning membership credit, and Subchapter F of that chapter, concerning veteran's (USERRA) service credit. Subchapter F establishes policies for an eligible member or retiree to purchase up to five years of eligible veteran's service credit in the retirement system or to establish compensation credit, in accordance with the requirements of USERRA, the federal law protecting veterans' benefits upon re-employment or application for re-employment following active military duty.

Section 25.71 generally concerns USERRA service credit. The adopted amendments to §25.71 clarify that a member may be eligible for USERRA service credit upon return to or application for re-employment with the same TRS-covered employer that the member left in order to perform military service.

Section 25.73 addresses ineligible military service. TRS adopts a minor punctuation change to the section.

Section 25.74 concerns the cost to purchase USERRA service credit. The adopted amendments delete redundant parenthetical references to a statute or rule. The amendments also delete

subsection (f) relating to the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The limitations still apply but recent amendments to TRS rules 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the deletion of subsection (f) will eliminate redundancy.

Section 25.75 concerns the application process for requesting USERRA service credit. In addition to clarifying references to types of service, the adopted amendments change the deadline by which USERRA service credit may be purchased. The rule formerly tracked minimum federal law requirements but was confusing to apply. TRS adopts a simpler and more lenient five-year deadline, which will be easier to administer.

TRS adopts new §25.77 to comply with USERRA by addressing USERRA service that is creditable but not established. TRS adopts the new section to permit a member who performs USERRA service but who chooses not to purchase TRS credit for that service to have the service considered as if it were credited in TRS, to the extent required by USERRA. Under adopted new §25.77, TRS will determine eligibility for retirement benefits and health benefits under the retiree plan, TRS-Care, as if the member had purchased credit for the service. The unpurchased USERRA service, however, will not be used to calculate actual benefits.

No comments on the proposal were received.

Statutory Authority: The amendments and new rule are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §823.304(f) of the Government Code, which authorizes the board to adopt rules to comply with the federal law relating to USERRA service credit.

Cross-Reference to Statute: The adopted amendments and new rule implement 38 U.S.C. §4301 et seq. (USERRA) and §823.304 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §25.82, §25.85

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.82 and §25.85, concerning the purchase of out-of-state service credit, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9647).

The adopted amendments arise from TRS' four-year rule review of Chapter 25, Subchapter G, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter G establishes policies for eligible members to purchase up to 15 years of out-of-state service credit in the system.

Section 25.82 concerns the cost to purchase out-of-state service credit, and §25.85 concerns the amount of out-of-state service credit that can be purchased. The adopted amendments to both sections delete references to the Internal Revenue Code requirement that deposits must be paid in a manner consistent with the annual limitations on contributions from a member to the plan. The tax code limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of that language in §25.82 and §25.85 will eliminate redundancy.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement §823.401 of the Government Code.

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SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

34 TAC §25.113

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.113, concerning the transfer of credit between TRS and the Employees Retirement System of Texas (ERS), the retirement plan for state employees, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9648).

The adopted amendments arise from TRS' four-year rule review of Chapter 25, Subchapter H, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter H implements the program allowing members of TRS or ERS who have service under both systems to consolidate their service credit and retire under one system.

The adopted amendments to §25.113 provide more flexibility in the deadline for a beneficiary to transfer service credit after a member's death, require certification of the last date of employment with an ERS-covered employer, and make minor wording

changes. The adopted amendments also clarify that transferring members who purchase military or out-of-state service credit may purchase only the number of years allowed by law (five or fifteen years, respectively). The adopted amendments further clarify that returning to work after retirement under the transfer law does not expand the total number of years allowed to be purchased.

The adopted amendments address the continued applicability of certain former laws to "grandfathered" members and retirees, i.e., those covered by old law and exempted from certain restrictions or less favorable provisions in new law. The amended rule modifies the way the average salary is calculated when a member transferring credit does not have the minimum number of years of service normally used to calculate a salary average as part of the determination of the annuity payable (TRS normally uses the three highest salary years for grandfathered members and five years for members who were not grandfathered): the amended rule allows TRS to use the number of years of credit available. The adopted amendments explain how a grandfathered TRS member will be treated after retiring under the ERS/TRS transfer program, including those who retire under ERS but then return to work in a TRS-covered position and become eligible to accrue additional TRS benefits. The adopted amendments also address the applicability of the retirement eligibility changes enacted in 2005 for members joining TRS on or after September 1, 2007--specifically, the amendments provide that the new retirement eligibility provisions apply to members retiring under ERS but then returning to work under TRS. The adopted amendments in new subsection (o), relating to return to TRS-covered employment, capture existing policy on the grandfathering and new member issues.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §805.008, which authorizes TRS and ERS to adopt rules for determining the value of the monthly annuity to be paid by the system from which service credit is transferred; §805.009, which authorizes TRS and ERS to adopt rules for the administration of the TRS-ERS service credit transfer program; and §825.102, which authorizes the TRS board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement Chapter 805 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

34 TAC §25.121, §25.123

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.121 and §25.123, concerning verification and certification of service or compensation, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9650).

The adopted amendments arise from TRS' four-year rule review of Chapter 25, Subchapter I, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter I addresses how service or compensation may be verified and certified.

Section 25.121 concerns employer verification of service or compensation. The adopted amendments to §25.121 clarify that the requirements for verification apply not only to unreported service or compensation but also to service or compensation reported but in need of additional documentation to be creditable. Section 25.123 concerns certification of service and compensation. In addition to making minor wording changes for clarification, the adopted amendments to §25.123 add a new provision explaining that the Commissioner of Education or a designated custodian must verify the service or compensation of an individual who rendered service for a school no longer in operation, including a charter holder or charter school.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement §825.403 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.131, §25.132

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to 34 TAC §25.131, concerning required service, with changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9842). The board adopts amendments to §25.132, concerning paid leave time, without changes to the text as proposed in the November 5, 2010, issue of the *Texas Register* (35 TexReg 9842).

The adopted amendments result from TRS' four-year rule review of Chapter 25, Subchapter J, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter J establishes the amount of time a member must serve in a TRS-eligible position to receive a year of service credit.

The public comment period on the proposal began November 5, 2010, and ended December 6, 2010. In addition, on December 9, 2010, the board and the board's policy committee held public meetings at which the public was given the opportunity to comment on the published proposal. A summary of any public comments received and TRS' responses to them are set out below in this preamble.

Section 25.131 addresses how long an individual must work during a school year to receive a year of TRS service credit. The adopted amendments relate to how much work in a school year is required to receive a year of TRS service credit. The board is solely responsible for that determination. The rule formerly utilized three periods of time for establishing a year of service credit: 4 and 1/2 months; a full semester of more than 4 calendar months; or 90 days if the member had a contract or work agreement that would qualify the member for a year of service credit but the member could only render 90 days of work. Having three different standards for determining a year of creditable service resulted in confusion and misinterpretation of the rule. Staff experience reflected that most members and TRS-covered employers understood that 90 days of work would render a year of service credit. For most members, only the amount of work during the first and last year of employment is at issue. The adopted changes utilize a "90 days of work" standard for establishing a year of service credit and eliminate the other two standards, except in the final year before retirement. To address concerns that the timing of achieving an additional year of service credit should not encourage retirees to leave employment during a school semester when children are in attendance (as contrasted to during a semester break) and the hardship that the timing of an employee's departure may cause for employers, the adopted changes include an exception during the last school year prior to retirement. For the last school year before retirement, the amended rule allows TRS to grant a retiring member a full year of service credit for working only a full fall semester even though that semester may entail fewer than 90 days of work. The adopted changes also clarify how days of work or paid leave may be counted in meeting the requirements for a year of service credit and how holidays or days that the TRS-covered employer is closed for business will be counted. The board adopts the foregoing amendments to §25.131 with changes to the published text of the proposed rule to indicate that the adopted amendments take effect at the start of the 2011-2012 school year and that the provisions of the former rule apply until then. In response to the publication of the proposed amendments to §25.131, TRS received written comments from one interested party, the Texas Classroom Teachers Association (TCTA). Texas-AFT, another interested party, provided public testimony at the December 9, 2010 meeting of the board's Policy Committee on the proposed amendments to §25.131 but did not submit written comments.

Comment: TCTA characterizes amended §25.131 as a change that standardizes the time needed to establish a year of service credit in the retirement system to 90 days of work or paid leave. TCTA opposes the adoption of a 90-day standard for determining a creditable year of service credit in §25.131(a) (adopted as §25.131(a)(1)) because it would prevent members from leaving during a convenient and well-understood break in the school year. TCTA concedes that the exception provided in adopted §25.131(a)(3) for members who are in their last year prior to retirement eliminates some of the association's concern. But TCTA contends that many other situations exist in which an employee needs to leave mid-year and has some discretion in choosing the actual date of departure. TCTA contends that the 90-day standard would disrupt school districts and classrooms because teachers and other classroom personnel would be required to work several days into a new semester (e.g., after the winter break) in order to meet the 90-day requirement. TCTA also comments that the former rule corresponds to Texas Education Agency (TEA) rules that denote the minimum number of days required to earn or receive credit for a year of experience for purposes of placement on the state minimum salary schedule. TCTA concludes its comments by recommending that, if the board were to adopt the 90-day standard as proposed in §25.131(a), then the board should delay implementation of it and engage in a vigorous educational effort to make all affected employees aware of the implications of choosing a mid-year resignation date.

System Response: TRS agrees with TCTA's characterization of amended §25.131 as a change that standardizes the time needed to establish a year of service credit in the retirement system to 90 days of work or paid leave. TRS adds that adopted §25.131(a)(3) provides an exception for the last year of service before retirement: a retiring member could earn a year of creditable service by working or receiving paid leave for a full fall semester. TRS disagrees that the rule changes would prevent a member from leaving employment at any desired time. The concerns expressed may be resolved through notice to TRS participants and training so that departure dates that are discretionary may be timed to ensure service credit for the year. TRS asserts that the convenience of the small number of members who work on a calendar based on semesters and who may leave employment during the school year has created an administrative problem for TRS that results in the inability of TRS to determine exactly when a year of service credit has been earned without further review, administrative inefficiencies, and inequities among the participants of TRS. TRS cannot quantify or evaluate the amount of disruption that may occur when the relatively few members who are employed in the classroom settings work several days into the new semester but submits that the administrative difficulty for TRS in communicating and administering the former rule has been considerable.

With regard to TCTA's comment regarding TEA rules that corresponded to former §25.131, it appears that TEA has utilized the three different time periods (4 1/2 months, full semester, or 90 days) for granting one year of experience for purposes of placement on the state minimum salary schedule, it is an important distinction that these standards only apply to 100% employment. Employment at a 50% level requires 180 days of employment. The current TRS rule does not require 100% employment for any of the three time periods in order to receive a year of service credit. Adopted §25.131 is more generous to participants than corresponding TEA rules because TRS' rule counts any amount of employment in a TRS-covered position towards the 90-day requirement. In short, while on the surface there appears to be some attempt to standardize the amount of work required to receive a year of work experience under TEA and a year of service credit under TRS, the requirements in fact are still different.

TRS agrees with TCTA's recommendation to delay the implementation of the amended rule as proposed. Accordingly, the board delays implementation of the amended rule until the beginning of the 2011-2012 school year. To that end, the board adopts

amended §25.131 by creating a new subsection (a) with four paragraphs that contain all the new language for establishing the 90-day standard along with the attendant exception for the last full fall semester before retirement and provisions explaining the treatment of substitutes and days that employer is scheduled to be closed. See adopted §25.131(a)(1) - (4). New subsection (b) of the amended rule continues the application of the former rule through the end of the current 2010-2011 school year. See adopted §25.131(b)(1) - (4). TRS also agrees that affected TRS members and TRS-covered employers need to be made aware of the changes contained in adopted §25.131 and will undertake that educational effort in implementing the amended rule.

Comment: Texas AFT recommends not adopting amended §25.131 until a way can be found to expand the exception for working a full fall semester but less than 90 days to include members other than just those who are retiring and are in their last school year before retirement. Texas AFT urges providing a broader exception to the 90-day standard while still easing the administrative burden on TRS to process the additional exceptional cases.

System Response: TRS declines to delay the adoption of amended §25.131. TRS adopts the limited exception in §25.131(a)(3) without expanding it because the similarly broad exception in the former rule proved to be burdensome to administer. (That broad exception, which will be continued through the end of the 2010-2011 school year, granted a year of service credit to members who served less than 4 1/2 months in a school year but served full semester of more than four calendar months.) Consequently, adopting another broad exception to the 90-day work standard would compromise the administrative advantages and efficiencies gained by implementing the limited exception in adopted §25.131(a)(3).

Section 25.132 concerns the use of paid leave time in determining a creditable year of service. TRS proposes amending the section by adding clarifying language that addresses how holidays and days the TRS-covered employer is closed for business will be counted in determining whether a year of service credit has been earned. The proposed changes to §25.132 are consistent with those proposed for §25.131, as described above in this preamble. TRS received no comments in response to the publication of the proposed amendments to §25.132.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §823.002, which authorizes the board to determine by rule the amount of service equivalent to a year of service credit; §823.201, which authorizes the board to adopt rules for the granting of membership service credit; and §825.102, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments implement the following divisions of the Government Code--Chapter 823, Subchapters A and C and Chapter 824, Subchapter C.

§25.131. Required Service.

(a) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying deposits and fees for the work as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position who worked or received paid leave for less than 90 days in the school year but worked or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work in an eligible position or receive paid leave from an eligible position for at least ninety days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

(b) For school years prior to the 2011-2012 school year:

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

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 K. DEVELOPMENTAL LEAVE

34 TAC §25.152

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.152, concerning application and payment for developmental leave credit,

without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9651).

The adopted amendments result from TRS' four-year rule review of Chapter 25, Subchapter K, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter K establishes processes for an eligible member to establish up to two years of developmental leave service credit.

Section 25.152 concerns application and payment for developmental leave credit. The adopted deletion of subsection (g) relates to the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. Currently the tax code limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of similar language in §25.152 eliminates redundancy.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments implement §823.402 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §§25.161 - 25.164

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§25.161 - 25.164, concerning other special service credit, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9652).

The adopted amendments result from TRS' four-year rule review of Chapter 25, Subchapter L, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter L addresses the purchase of various types of service credit by eligible members. An eligible member may purchase up to two years of work experience service credit, one year of unused state personal or sick leave credit, and one year of credit for service during a school year with a membership waiting period.

Section 25.161 concerns the purchase of work experience service credit, §25.162 concerns the purchase of state personal or sick leave credit, §25.163 concerns the use of purchased equivalent membership service credit to establish eligibility for retirement or health benefits, and §25.164 concerns the purchase of credit for service during a school year with a membership waiting period. Adopted amendments to all four sections delete provisions addressing whether the type of service credit covered by each rule may be used to establish eligibility for the retiree health benefit program, TRS-Care. Eligibility for TRS-Care is addressed in Chapter 41 of TRS' rules, and TRS elsewhere amends rules in the TRS-Care chapter to consolidate provisions like the deleted provisions in §§25.161(g), 25.162(c), 25.163, and 25.164(i). Adopted amendments to all four sections also delete provisions relating to the Internal Revenue Code (IRC) requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. Those IRC limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55 adequately address the limitations, and the deletions of similar language in §§25.161(a) and (h), 25.162(a) and (f), 25.163, and 25.164(j) eliminate redundancy.

In addition, TRS deletes the effective date of the ability to purchase state personal or sick leave credit in §25.162(a) because its appearance in the rule is no longer needed. An adopted amendment to §25.162(b) makes explicit existing policy, supported by the related statutory provision, §823.403 of the Government Code, that a member must have at least ten years of service credit for actual service to purchase state personal or sick leave credit.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board. In addition, amendments to §25.164 are adopted under §823.406 of the Government Code, which authorizes the board to adopt rules for administering the credit purchase option for service performed during a 90-day waiting period to become a member after beginning employment.

Cross-Reference to Statute: The adopted amendments generally affect Chapter 824 of the Government Code. In addition, the amendments to §25.161 implements §823.404 of the Government Code, the amendments to §25.162 implements §823.403 of the Government Code, and the amendments to §25.164 implements §823.406 of the Government Code. The amendments to §25.163 also affect Act of May 25, 2005, 79th Legislature, Chapter 1312, §3, 2005 Texas General Laws 4121, 4122.

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 M. OPTIONAL RETIREMENT PROGRAM

34 TAC §25.172

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.172, concerning the optional retirement program (ORP) and TRS, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9653).

The adopted amendments result from TRS' four-year rule review of Chapter 25, Subchapter M, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter M addresses ORP, a defined contribution retirement plan available in lieu of TRS' defined benefit plan to eligible employees of Texas higher education institutions.

The adopted amendments to §25.172 clarify how a person who elected ORP and participated in that program may again become a TRS member. Specifically, the amendments clarify that post-ORP employment in a public school *in a position eligible for TRS membership* generally requires a person to become a member of TRS. Consequently, the person is no longer eligible for ORP if subsequently re-employed in Texas higher education. If the person's intervening employment is in a public school but not in a position eligible for TRS, the person remains eligible for ORP upon re-employment in higher education and ineligible for TRS in the higher education position. Similarly, another adopted amendment clarifies that, if a person elects and participates in ORP and then goes to work for a state agency that is not a TRS-covered employer, then that intervening state agency employment does not entitle the person to become a TRS member if an institution of higher education later re-employs the person.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the TRS board of trustees to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments relate to Chapter 830 of the Government Code.

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SUBCHAPTER N. INSTALLMENT PAYMENTS

34 TAC §§25.182 - 25.184, 25.188

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts amendments to §§25.182 - 25.184 and §25.188, concerning installment payments for the purchase of special service credit, without changes to the text as proposed in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9655).

The adopted amendments result from TRS' four-year rule review of Chapter 25, Subchapter N, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less. TRS also adopts the repeal of §25.190 of Subchapter N elsewhere in this issue.

Section 25.182 concerns the purchase of special service credit in yearly increments. In that section, TRS deletes references to service purchased under former §823.405 of the Government Code, which allowed purchase of up to three years of credit without performance of service before its repeal. TRS deletes the order prescribed in §25.182(a)(1) - (3) in which a member must purchase years of credit because the bills TRS generates for the purchase of credit establish the required order of payment.

Section 25.183 concerns nonpayment of installment payments for special service credit. The amendments changes the word "district" to "employer" in §25.183(4) to conform the reference to current usage by the system. Section 25.184 concerns the refund of installment payments already made but not credited. TRS adopts amended §25.184 to delete references to service purchased under former §823.405 of the Government Code, which allowed purchase of up to three years of credit without performance of service before its repeal.

Section 25.188 concerns the completion of installment payments for special service credit by a beneficiary. TRS adopted the amendments to this section to establish a 12-month deadline for a beneficiary to complete installment payments after the death of a member who had initiated an installment payment plan and had made at least one payment before the member's death. TRS also adopts other minor wording changes in §25.188 for clarity and conciseness.

No comments on the proposal were received.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board; §825.410, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit; and §825.411, which authorizes the system to adopt rules to administer that statute concerning payroll deductions for service credit.

Cross-Reference to Statute: The adopted amendments relate to the following sections of the Government Code: §823.301 and §823.302, concerning military service credit; §823.304, concerning reemployed veteran's credit under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. §4301 *et seq.;* §823.401, concerning out-of-state service credit; and §823.404, concerning the purchase of equivalent service credit for work experience by a career or technology teacher.

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34 TAC §25.190

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS or system) adopts the repeal of §25.190, concerning the employer pick-up of installment payments for the purchase of special service credit, without changes to the proposal as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9656).

The adopted repeal results from TRS' four-year rule review of Chapter 25, Subchapter N, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less.

TRS adopts the repeal of §25.190 because it is not used. The board adopted the rule in 1997 to then provide TRS staff flexibility in meeting certain changes to federal tax code requirements, including the option to implement an employer pick-up of installment payments for special service credit if needed. Because of subsequent tax code changes and feasibility issues, TRS never implemented an employer pick-up for special service credit purchases and does not anticipate doing so under current law. Consequently, the reasons for originally adopting §25.190 no longer exist.

No comments on the proposal were received.

Statutory Authority: The repeal is adopted under the following sections of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board; §825.410, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit; and §825.411, which authorizes the system to adopt rules to administer that statute concerning payroll deductions for service credit.

Cross-Reference to Statute: The adopted repeal relates to §823.004(b) of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2011.

TRD-201100893
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Teacher Retirement System of Texas
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Proposal publication date: October 29, 2010
For further information, please call: (512) 542-6438

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new Subchapter A, General Provisions, consisting of §§45.101 - 45.105; Subchapter B, Eligibility, Enrollment, and Review, Division 1, Eligibility and Maintenance of Interest List, consisting of §45.201 and §45.202; Division 2, Enrollment Process, consisting of §§45.211 - 45.217; Division 3, Reviews, consisting of §§45.221 - 45.225; Subchapter C, Rights and Responsibilities of an Individual, consisting of §45.301 and §45.302; Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services, consisting of §§45.401 - 45.410; Subchapter F, Adaptive Aids and Minor Home Modifications, Division 1, Adaptive Aids, consisting of §§45.601 - 45.609; Division 2, Minor Home Modifications, consisting of §§45.611 - 45.619; Subchapter G, Additional CMA Requirements, consisting of §§45.701 - 45.707; Subchapter H, Additional DSA Requirements, consisting of §§45.801 - 45.808; Subchapter I, Fiscal Monitoring, consisting of §45.901 and §45.902; and the repeal of Subchapter C, Program and Claim Payment Requirements, consisting of §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, and 45.343; and Subchapter D, Fiscal Monitoring, consisting of §45.401 and §45.403, in Chapter 45, Community Living Assistance and Support Services. The new §§45.103, 45.104, 45.201, 45.202, 45.211, 45.212, 45.213, 45.214, 45.215, 45.216, 45.217, 45.223, 45.224, 45.225, 45.302, 45.401, 45.402, 45.403, 45.404, 45.405, 45.406, 45.407, 45.408, 45.409, 45.410, 45.602, 45.603, 45.604, 45.605, 45.606, 45.609, 45.613, 45.614, 45.617, 45.701, 45.702, 45.704, 45.705, 45.707, 45.801, 45.803, 45.804, 45.805, 45.806, 45.808, 45.901, and 45.902 are adopted with changes to the proposed text published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8058). The new §§45.101, 45.102, 45.105, 45.221, 45.222, 45.301, 45.601, 45.607, 45.608, 45.611, 45.612, 45.615, 45.616, 45.618, 45.619, 45.703, 45.706, 45.802, and 45.807 are adopted without changes to the proposed text. The repeal of §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, 45.343, 45.401, and 45.403 are adopted without changes to the proposed text.

The new sections are adopted to rewrite and reorganize the CLASS rules so they are easier for CLASS Providers and the public to use and understand. Currently, CLASS Program rules are located in two different chapters of the Texas Administrative Code and this adoption will combine all CLASS rules into one chapter. In addition, the purpose of the adoption is to clarify, update, and add rule language to reflect current practices and requirements of the CLASS Program, much of which is currently set forth in policy clarification letters, Information Letters, and the *CLASS Provider Manual.* Further, the new rules are adopted to make terminology consistent with that in the CLASS Program waiver application renewal approved by the Centers

for Medicare and Medicaid Services (CMS) effective September 1, 2009, and with other Medicaid waiver programs operated by DADS. Such changes include use of the Mental Retardation/Related Conditions (MR/RC) Assessment form instead of the Level of Care form; requiring a physician signature on the MR/RC Assessment form upon initial evaluation, but not annually, as previously required; and changing terminology from individual service plan (ISP) to individual plan of care (IPC).

The adopted rules no longer include audiology as a CLASS Program service because this service is available to individuals in the CLASS Program through a non-waiver Medicaid source. The adopted rules also no longer include hydrotherapy as a CLASS Program service because the activities under this service may be performed as physical therapy, occupational therapy, and, in some circumstances, aquatic therapy. Further, there is not a state or other entity that licenses or certifies persons to provide hydrotherapy.

The adopted rules require a direct services agency (DSA) to submit to DADS a newly completed MR/RC Assessment at least 60 calendar days before the current IPC expires and an adopted renewal IPC, new individual program plan (IPP), and habilitation plan at least 30 calendar days before the current IPC expires, to ensure that DADS has sufficient time to conduct a utilization review of the renewal IPC before the end of the current IPC period.

The adopted rules permit DADS to withdraw an offer of a program vacancy made to an individual if the individual does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face visit or an extension granted by DADS or does not make good faith efforts to complete such an application. This provision allows DADS to offer a program vacancy that is remaining unused to the next person on the interest list and fill CLASS Program vacancies in a more timely manner.

In addition, the adopted rules permit a DSA to provide habilitation, respite, or an adaptive aid that is not included on an individual's IPC if a registered nurse determines that the individual's health and safety is in immediate jeopardy. The DSA must, within seven days after providing the service, submit documentation that explains the circumstances and evidences the nurse's determination. This provision allows a DSA the discretion to provide a service in an emergency situation without first obtaining approval by a DADS staff person, who may not be available if DADS offices are closed. This process is consistent with that in other Medicaid waiver programs operated by DADS.

Further, the adopted rules permit DADS to terminate an individual's CLASS Program services if the individual has been admitted to a facility specified in the rule or leaves the state for more than 180 days, unless a 30-day extension of the person's suspension has been granted by DADS. This provision is added to implement DADS' policy for all Medicaid waivers operated by DADS to use these time frames in terminating services when an individual is admitted to a facility or is out of state.

The adopted rules also no longer require a case manager to have a college degree. A case manager is qualified if he or she has a high school diploma or its equivalent and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities. This provision expands the pool of qualified persons who are able to provide case management.

Minor editorial changes were made to the text of §§45.103, 45.201, 45.202, 45.211, 45.212, 45.214, 45.215, 45.216, 45.217, 45.223, 45.224, 45.225, 45.302, 45.401, 45.403, 45.404, 45.405, 45.406, 45.407, 45.408, 45.409, 45.603, 45.604, 45.605, 45.606, 45.609, 45.614, 45.704, 45.705, 45.803, and 45.804 to clarify and improve the accuracy of the sections.

The agency made technical changes where necessary throughout the rule sections to correct minor punctuation and grammar errors and rule cross-references.

In §45.103, the agency added definitions of "denial", "dental treatment", and "reduction" as new paragraphs (19), (20), and (56); subsequent paragraphs are renumbered. The agency added definitions of "denial" and "reduction" to clarify the difference between the agency's reduction of an individual's service and denial of an individual's service. The agency inadvertently omitted dental treatment as a service from the proposed rules although it is included in the CLASS Program waiver application renewal.

Also in §45.103, the agency revised the definition of "direct services" in renumbered paragraph (21) to add "continued family services", which was omitted inadvertently from the proposed definition, and moved the definition of "massage therapy" to be in alphabetical order as new paragraph (40). The agency also revised the definition of "prevocational services" in renumbered paragraph (52) by substituting "instruction" for "counseling" to more accurately describe this service element. The agency revised the definition of "respite" in renumbered paragraph (62) by deleting "due to non-routine circumstances" to allow for more flexibility in allowing an individual to qualify for respite. The agency also revised the definition to specify that respite is not permitted when the person who routinely provides assistance and support to the individual is the habilitation service provider or an employee in the CDS option who provides habilitation (in addition to a service provider of support family services or continued family services). This change was made to prohibit respite if a routine caregiver is a service provider for habilitation because respite is not permitted when the routine caregiver is paid to provide services. The agency revised the definition of "service planning team" in renumbered paragraph (64) to require that a person selected by an individual's DSA to be a member of the team must be approved by the individual or LAR; the agency also deleted the phrase "at the DSA's discretion." This change was made to promote the person-directed planning process philosophy that the individual has a significant role in determining who is a member of the service planning team. The agency revised the definition of "specialized therapies" in renumbered paragraph (69) to add "maintain skills" to more accurately describe the purposes of specialized therapies. The agency revised the definition of "support family services" in renumbered paragraph (73) by substituting "supporting" for "training" and "maintain" for "retain" to more accurately define these services.

The agency added a sentence in §45.104(a) to state that CLASS Program services are intended, as a whole, to enhance an individual's integration into the community, maintain or improve independent functioning, and prevent the individual's admission to an institution. This change was made to state the overall purpose of CLASS Program services and includes deleted language from §45.214(b) described elsewhere in this preamble. The agency revised §45.104(d) to add "dental treatment" as new paragraph (5) in the list of CLASS Program services and renumber subsequent paragraphs. As already stated, the agency inadvertently

omitted the service from the proposed rules although it is included in the CLASS Program waiver application renewal.

The agency revised §45.201(a)(5) to state that an individual is eligible for CLASS Program services if the individual has an IPC cost at or below 200 percent of the estimated per capita cost of providing services in an ICF/MR as of August 31, 2010. The August 31st date was added because the cost of providing services in an ICF/MR decreased on September 1, 2010 as the result of a provider reimbursement rate reduction and the agency does not want the cost decrease to affect the eligibility of persons in the CLASS Program.

The agency revised §45.212(a)(2) to include the "person actively involved with the individual" as someone whom the case manager must provide an explanation of various topics during the face-to-face visit at the beginning of the enrollment process. This change is consistent with requirements in §45.217, regarding the CDS option, and §45.808, regarding the DSA's complaint process, that explanations about the CLASS Program be provided to a person actively involved with the individual. Further §45.212(a)(2) was amended to add the right to request a fair hearing and the process to report an allegation of abuse, neglect, or exploitation or file a complaint regarding case management to the topics that a case manager must explain to the individual and LAR or actively involved person. These revisions were made because it is critical that an individual and LAR or actively involved person know about these topics at the beginning of the enrollment process.

The agency revised §45.212(g)(1)(A) to include the "person actively involved with the individual" as someone whom the DSA nurse must conduct a face-to-face visit at the beginning of the enrollment process. This change was made to make consistent with provisions in and changes to this rule that require the actively involved person to be included in discussions about the CLASS Program. Further, the agency restructured §45.212(g) to require a DSA to provide the explanation of the complaint process to the individual and LAR or actively involved person as described in §45.808, within 14 calendar days after the DSA receives certain information from the case management agency (CMA). This change was made to ensure that the individual and LAR or actively involved person understand how to file a complaint at an early point in the enrollment process.

The agency revised §45.212(k) to state that DADS (instead of the CMA) sends written notice to an individual or LAR of the denial of the individual's request for enrollment into the CLASS Program. As proposed, the provision required the CMA to send written notice to the individual or LAR. This change helps ensure the consistency and appropriate coordination of fair hearing notices when an individual's enrollment is denied.

The agency revised §45.212(o)(2) to reflect that if an individual's proposed enrollment IPC is modified by DADS, this modification could only be a denial of a service, not a reduction of a service. A service included on an individual's proposed enrollment IP could not be reduced because the individual would not be receiving any services to reduce.

The agency revised §45.213(d) to state that if DADS denies diagnostic eligibility, DADS notifies both the DSA and CMA. As proposed, the rules did not state how a CMA received notice of such denial.

The agency deleted proposed §45.214(b)(4), which states that IPC services prevent an individual's admission to an institution, renumbered the subsequent paragraphs, and revised subsection (b) to state that each CLASS Program service on the IPC must meet the criteria in paragraphs (1) - (5). The deleted text is more appropriately incorporated in a new sentence in §45.104(a) which states that CLASS Program services are intended, as a whole, to enhance an individual's integration into the community, maintain or improve independent functioning, and prevent the individual's admission to an institution.

The agency revised §45.216(f)(2) to remove a reference to reduction of a CLASS program services as this subsection relates only to a denial of a CLASS Program service.

The agency revised §45.217(a)(2) to change *"www.dads.state.tx.us"* (the DADS website address) to "DADS website" in the event the website address changes in the future.

The agency revised §45.223(b)(2) to state that a case manager must develop a proposed revised IPC and revised individual program plans (IPPs) and, if necessary, a revised habilitation plan within five business days after becoming aware that an individual's need for CLASS Program services has changed. The agency included a time frame for this activity to help ensure that it was performed in a timely manner.

The agency revised §45.223(c) regarding IPPs by deleting a reference to meeting criteria in §45.215(a) because §45.215(a) does not include criteria regarding an IPP. Information to be included in an IPP is included in the definition of IPP in §45.103.

The agency revised §45.223(j) to clarify the steps a CMA must take if DADS denies or reduces a CLASS Program service on a renewal or revision IPC and how the modified IPC is handled.

The agency revised §45.224(a) by expanding the list of services that a DSA may provide to an individual to prevent the individual's health and safety from being placed in immediate jeopardy, even though the service is not included on the individual's IPC. The additional services are licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, and dental treatment. This change was made because it may be necessary for a DSA to provide one of these additional services in an immediate jeopardy situation. The change corresponds to another change at §45.805(b).

The agency revised §45.225(e) to clarify the steps a CMA must take if DADS denies or reduces a CLASS Program service as the result of a utilization review and how the modified IPC is handled.

In §45.302, the agency deleted paragraph (4) because the issue of using natural supports and other non-CLASS services and supports for which an individual is eligible is more appropriately addressed in DADS review of the IPC and, therefore, is included in §45.214(b)(3). In addition, the agency revised renumbered paragraphs (10) and (11) to prohibit an individual or LAR from engaging in a pattern of harassment that interferes with the ability to provide CLASS Program services or permitting a person present in the individual's home to engage in a pattern of harassment that interferes with the ability to provide CLASS Program services. These mandatory requirements were included in the previous rules governing the CLASS Program and remain important elements to the quality of services delivered and efficient operation of the program.

The agency revised §45.402(b) to state that DADS (instead of the CMA) sends written notice to the individual or LAR of DADS denial of the individual's request for enrollment into the CLASS Program and includes a notice of the individual's right to request a fair hearing. In addition, this revised subsection states that DADS sends a copy of the written notice to the DSA, CMA, and,

if selected, CDSA. The agency made the change to help ensure the consistency and appropriate coordination of fair hearing notices when an individual's enrollment is denied. The agency also deleted §45.402(c) because it contained the requirement that the CMA send the written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program.

The agency revised §45.403(b) to state that DADS sends a copy of the modified IPC to the CMA when it denies a service on an IPC. As proposed, the rules did not state how a CMA received notice of the modified IPC. The agency also revised subsection (c) to clarify that a CDSA receives a copy of the fair hearing notice only if the individual has selected the CDSA option. The agency revised §§45.404(g), 45.405(c), 45.406(e) 45.407(e), 45.408(d), and 45.409(g) for the same reason.

The agency revised §45.405(b) to state that DADS sends a copy of a modified IPC to the CMA when it proposes to reduce a service on an IPC instead of stating that it includes a copy of the modified IPC with the fair hearing notice. This change was made because DADS may, at times, send the modified IPC separately from the fair hearing notice. The agency added new §45.405(d) to reiterate the federal requirement and DADS current policy that if an individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the DSA may not implement the modified IPC but must provide the service to the individual in the amount authorized in the prior IPC while the appeal is pending.

The agency added new §45.406(f), which states that, if the reason for the proposed termination of CLASS Program services is based on §45.201(a)(5) (regarding the cost limit for an individual's IPC), DADS sends written notice to the individual or LAR of the proposal to terminate CLASS Program services and includes a notice of the individual's right to request a fair hearing. New subsection (f) also states that DADS sends a copy of the written notice to the individual's DSA, CMA, and, if selected, CDSA. The new subsection reflects DADS current practice. A revision was made to subsection (d) to state that subsection (f) is an exception to the practice of DADS notifying the CMA that DADS authorizes the proposed termination of CLASS program services so the CMA may send the fair hearing notice.

The agency added new §45.406(g) and §45.407(f) to reiterate the federal requirement and DADS current policy that if an individual or LAR requests a fair hearing before the effective date of termination of CLASS Program services, as specified in the written notice, the DSA must continue to provide services to the individual in the amounts authorized in the IPC while the appeal is pending.

The agency replaced the proposed text in §45.410 with new text stating that when DADS receives a request for a fair hearing from an individual or LAR, DADS sends a copy of the request to the individual's CMA. In addition, the new text requires the CMA, within one business day after receipt of the request of the fair hearing from DADS, to submit a completed Fair Hearing Request Summary, as described in the *CLASS Provider Manual,* to DADS. This change was made because HHSC requires DADS to enter information, which is on the completed Fair Hearing Request Summary, in HHSC's online system within five days after DADS receives the individual's request for a fair hearing. The agency also revised the section title to reflect the content of the new text and included the proposed text of §45.410 in §45.702 as new subsection (d).

The agency revised §45.602(a) to state that the $10,000 maximum amount DADS authorizes per IPC period for adaptive aids includes dental treatment because that is DADS current practice. The agency also deleted subsection (b) which stated that a $300 amount authorized for repair and maintenance of an adaptive aid is not included in the $10,000 authorization limit for adaptive aid. This deletion was made because the $300 amount is included in the $10,000 limit. The agency re-lettered subsequent subsections and revised new subsection (b) to clarify that a DSA may request authorization of up to $300 per IPC period for repair and maintenance of an adaptive aid. The agency deleted proposed subsection (e) because it distinguished between amounts included in the $10,000 authorization limit for adaptive aids and, in practice, all amounts authorized for repair and maintenance of an adaptive aid are included in the $10,000 authorization limit.

The agency revised §§45.603(c), 45.604(d) and (i), and 45.613(c) and (h) to state that DADS notifies a DSA in the electronic billing system (instead of the "TMHP online billing system") of whether a proposed IPC is authorized. This change was made in the event the type of billing system changes in the future. The agency also added a statement to these subsections that DADS notifies a CMA, in writing, of whether the proposed IPC is authorized because, as proposed, the rules did not state how a CMA received notification of an authorized IPC.

The agency revised language in §§45.604(a), 45.605(a), and 45.606(a) to clarify that adaptive aids costing $500 (in addition those costing more than $500) are covered by these sections. Previous language inadvertently excluded adaptive aids costing $500. In addition, the title of §45.604 and references to that section have been amended to reflect this correction.

In §45.701(c), the agency substituted "at the website address listed in the CLASS Provider Manual" for the website address of the current contractor as the destination for a CMA to subscribe to receive email notifications concerning the CLASS Program. This change was made in the event the specific website address changes.

The agency revised §45.702(b) to correspond to DADS changes to §45.212(a)(2) and added the right to request a fair hearing and the process to report an allegation of abuse, neglect, or exploitation or file a complaint regarding case manager to the topics that a case manager must explain to the individual and LAR or actively involved person on an annual basis. These revisions were made because it is critical that an individual and LAR or actively involved person be informed of these topics regularly. The agency revised §45.702(c) to include the "person actively involved with the individual" as someone to whom the case manager must provide an explanation of the individual's option to transfer to a different CMA or DSA. This change is consistent with requirements in §45.217, regarding the CDS option, and §45.808, regarding the DSA's complaint process, that explanations about the CLASS Program be provided to an actively involved person. The agency also added new subsection (d) and revised the section title to reflect the addition. New subsection (d) incorporates the text from proposed §45.410 as addressed previously in this preamble. The new subsection states that if termination of an individual's CLASS Program services in accordance with Subchapter D threatens an individual's health and safety, a CMA must ensure a case manager offers the individual access to alternative long-term services and supports in the community or to institutional services.

The agency added new subsection (g) to §45.705 to require a CMA to follow the process for requesting authorization to

purchase dental treatment as described in the *CLASS Provider Manual.* This change was made because dental treatment was added as a service to the rules, as previously addressed in the preamble and, therefore, a statement was included about the process for a CMA to request authorization for dental treatment.

The agency deleted paragraph (3) of §45.707(c) and renumbered subsequent paragraphs because the content of the deleted paragraph is addressed in §45.702(b). The agency also revised renumbered paragraph (4) of the subsection to require the CMA to have written evidence of the date a written complaint is received; as proposed, the text required the CMA to date stamp the written complaint. This change was made to allow a CMA other ways to demonstrate the date of receipt of a written complaint.

In §45.801(b), the agency substituted "at the website address listed in the CLASS Provider Manual" for the website address of the current contractor as the destination for a DSA to subscribe to receive email notifications concerning the CLASS Program. This change was made in the event the specific website address changes.

The agency revised §45.803(b) for clarification purposes and to reference revised subsection (d)(17), as discussed below, that addresses prohibitions on certain service providers. The agency added new §45.803(d)(7) to state that a qualified service provider of dental treatment must be a person licensed to practice dentistry, dental surgery, or dental hygiene in accordance with Texas Occupations Code, Chapter 256, and renumbered subsequent paragraphs in subsection (d). This change was made because dental treatment was added to the rules and, therefore, a description of a qualified service provider was added. The agency also revised renumbered paragraph (17) of subsection (d) to add prevocational services to the list of direct services for which a parent of an individual who is under 18 or a spouse of an individual may not be a service provider. This change was made because this is consistent with current practice and the CLASS Program waiver application renewal.

The agency revised §45.805(b) by expanding the list of services that a DSA must provide to an individual to prevent the individual's health and safety from being placed in immediate jeopardy, even though the service is not included on the individual's IPC. The additional services are licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, and dental treatment. This change was made because it may be necessary for a DSA to provide one of these additional services in an immediate jeopardy situation and corresponds to another change at §45.224(a).

The agency added new subsections (d) and (e) to §45.806 to specify that the maximum amount DADS authorizes for an individual for all dental treatment and adaptive aids combined is $10,000 per IPC period for an individual and to require a DSA to follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual.* These changes were made because dental treatment was added as a service to the rules, as previously addressed in the preamble and, therefore, language was included to explain the authorized limit of dental treatment and a statement about the process for a DSA to request authorization for dental treatment was added. The agency also added "dental treatment" to the section title for clarification.

The agency revised §45.808(3) to require a DSA to inform an individual and LAR, or an actively involved person, orally and in writing, (instead of only in writing) of the process by which they may file a complaint regarding the provision of direct services. This change was made to make consistent with explanation requirements described in §45.212(a)(2), §45.212(g)(2), and §45.702(b). For clarification, the agency also revised the rule to reference revised §45.212(g)(2) regarding the time frame by which the initial explanation of the complaint process must be given, as previously addressed in the preamble. The agency also included a requirement that this information be provided on an annual basis because it is critical that an individual and LAR or actively involved person be informed of this process regularly and to make consistent with changes to §45.702(b). In addition, the agency revised paragraph (5) of the section to require a DSA to have written evidence of the date a written complaint is received; as proposed, the text required the DSA to date stamp the written complaint. This change was made to allow a DSA other ways to demonstrate the date of receipt of a written complaint.

The agency revised §45.902(5) to state that a program provider may be reimbursed for hours recorded on documentation generated by an electronic visit verification system. This change was made in the event the program provider uses an electronic visit verification system to document the amount of time a service provider works.

DADS received written comment from a licensed psychologist, two behavior analysts certified by the Behavior Analyst Certification Board, Inc. (BACB), three persons who are licensed psychologists and certified by BACB, eight licensed social workers, two graduate students in social work, a CLASS Program provider, Lone Star Association for Behavior Analysis, Texas Association for Behavior Analysis, Texas Association for Home Care & Hospice, Texas Psychological Association (TPA), Coalition for Nurses in Advanced Practice, and Health & Safety Institute in Oregon.

Comment: Two commenters stated that the proposal preamble does not explain that the definition of behavioral support has been broadened from current practice. The commenters stated that this major change should have been communicated more openly to the public.

Response: The agency disagrees with the comment. The definition of behavioral support included in the proposal reflects current practice in the CLASS Program. It is based on the service definition in the CLASS Program waiver application renewal posted on DADS website at *www.dads.state.tx.us,* and is consistent with the service definition listed in Appendix III of the *CLASS Provider Manual,* which predates the waiver renewal.

Comment: Two commenters stated that the preamble to the proposal included a mention of stakeholder meetings held to review draft versions of the new rules. The commenters reported that, to their knowledge, no psychologists were invited to the meetings and requested that the TPA be added to the list of stakeholders who are consulted about upcoming rule changes that affect the field of psychology.

Response: The agency responds that an organization may request to have its name added to DADS major stakeholder list by submitting a request to the Stakeholder Relations section in DADS Center for Consumer and External Affairs. The agency notes announcements concerning the stakeholder meetings mentioned in the preamble were posted on DADS website and were open to the public. The agency further states that any person or organization may register on DADS website

at *www.dads.state.tx.us* to receive e-mail notifications about stakeholder meetings and other DADS actions.

Comment: One commenter stated that the proposal preamble states that the rules require a DSA to submit a revised IPC and IPP to DADS. The commenter stated that the IPC and IPP are controlled by an individual's CMA and recommended that the rules be revised to state that the CMA is responsible for submitting these documents to DADS.

Response: The agency acknowledges that the proposal preamble incorrectly states that the DSA is responsible for submitting a renewal IPC, IPP, and habilitation plan to DADS at least 30 calendar days before the current IPC period expires, but explains that §45.223(d)(2)(A) correctly states that an individual's case manager is responsible for submitting the documentation to DADS.

Comment: A commenter requested that the phrase "calendar day" be changed to "business day" throughout the rules, and noted that while "business day" is defined, "calendar day" is not defined.

Response: The commenter does not offer a reason for the requested change but the agency declines to make the change and explains that "business day" is defined as a day when DADS state office is open and is most commonly used in prescribing a short time frame for an action to be taken by a CMA or DSA. DADS does not expect a CMA or DSA to take action on a day when DADS offices closed, e.g., a holiday or weekend. The term "calendar day" is used in prescribing longer time frames in the rules and is defined by its ordinary meaning.

Comment: A commenter requested that all references to the *CLASS Provider Manual* include the specific section. The commenter stated that the *CLASS Provider Manual* needs to be updated.

Response: The agency declines to make the change because sections of the *CLASS Provider Manual* may change in the future making references in the rule inaccurate. The *CLASS Provider Manual* is being revised with the involvement of stakeholders and is expected to be posted on the DADS website concurrent with the effective date of the new CLASS Program rules.

Comment: A commenter requested the deletion of the phrase "actively involved" throughout the rules, including the definition in §45.103. The commenter stated that without legal paperwork the CMA should not be required to involve another person in the decision-making process. The commenter further stated that an individual receiving CLASS Program services needs a legally authorized representative (LAR) if the individual is not able to make decisions concerning those services. The commenter also stated that the phrase is not used in any other rule set.

Response: The agency declines to make the requested change. An individual may elect to have the assistance of another person in making decisions regarding the CLASS Program, but the rules do not require that assistance. The references to "person actively involved with the individual" in the rules relate to the requirement for the DSA or CMA to include the actively involved person when conducting initial in-home visits with the individual and also include the actively involved person when explaining various topics to the individual, including the complaint processes, the CDSA option, and the option to transfer. The phrase "actively involved" is used in DADS rules governing the ICF/MR Program the Deaf Blind with Multiple Disabilities Program, the Home and Community-based Services (HCS) Program, and the Texas Home Living Program.

Comment: A commenter requested the addition in §45.103 of a definition for "Instrumental Activities of Daily Living (IADL)" and the addition of IADL in the definition of "support family services."

Response: The agency declines because the term "instrumental activities of daily living" is not used in the CLASS Program.

Comment: Concerning the definition of "adaptive aid" in §45.103, a commenter requested replacing the phrase "is included on the list of adaptive aids in the *CLASS Provider Manual"* with the phrase "allowable as described in the *CLASS Provider Manual."*

Response: The agency declines to make the requested revision because it is not as clear as the proposed text, which requires an adaptive aid be listed in the *CLASS Provider Manual* in order to be included in an IPC.

Comment: Concerning the definition in §45.103(7) of "behavioral support," two commenters objected to the inclusion in subparagraph (F) of "counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control maladaptive or socially unacceptable behaviors." The commenters stated that counseling is not an essential component of behavioral support services, and recommended that counseling for mental health issues should be defined and funded as a service separate from behavior support. The commenters described the elements in paragraph (7)(A) - (E) as "best practice" for behavioral support and noted that those elements are the core of descriptions of behavioral support in DADS rules for other programs serving individuals with intellectual and developmental disabilities.

Response: The agency responds that the definition of behavioral support included in the proposal includes the same elements as the service definition in the CLASS Program waiver application renewal posted on DADS website at *www.dads.state.tx.us.* All elements of the proposed definition are included in the service definition listed in Appendix III of the *CLASS Provider Manual,* which predates the waiver renewal.

Comment: Concerning subparagraphs (A) and (B) of the definition of "habilitation" in §45.103, a commenter asked what "awake" means and suggested that the term be replaced with "active support." In addition, in subparagraph (C) of the definition, the commenter requested that "unlicensed" be added before "service provider of habilitation" to clarify that a registered nurse delegates to an unlicensed person and not another type of service provider.

Response: The agency declines to make the changes. Regarding the requested changes to subparagraphs (A) and (B), the agency responds that the individual must be awake to benefit from the activities listed in those subparagraphs. The agency further responds that substituting "active support" for "awake" renders those subparagraphs unclear. In response to the request to insert "unlicensed" in subparagraph (C), the agency responds that insertion of such a term is unnecessary because service providers of habilitation, as described in §45.803, are not required to be licensed.

Comment: Concerning the definition of "massage therapy" in §45.103, a commenter stated that the term is not in alphabetical order.

Response: The agency agrees and has moved the definition and renumbered the paragraphs, as necessary.

Comment: Concerning subparagraph (H) of the definition of "own or family home" in §45.103, a commenter requested the addition of "and" after the phrase "Section 811 of the National Affordable Housing Act of 1990." The commenter stated that the addition would add clarity.

Response: The agency disagrees and responds that requested change renders the provision grammatically incorrect.

Comment: Concerning the definition of "prevocational services" in §45.103, a commenter recommended substituting the phrase "individualized services that are not job-task oriented" for "services that are not job-task oriented."

Response: The agency declines to make the change and responds that each service included on an IPC must be individualized to meet the needs and abilities of the individual.

Comment: Concerning the definition of "prevocational services" in §45.103, the same commenter recommended that the phrase "individual and group instruction" be substituted for "individual and group counseling" in subparagraph (B) of the definition.

Response: The agency agrees and has made the requested change.

Comment: A commenter stated that the definition of "registered nursing" in §45.103 seems redundant and recommended deletion.

Response: The agency disagrees and responds that it assumes the commenter believes the "registered nursing" is redundant of "registered nurse." The agency explains that both definitions are necessary because the former describes a CLASS Program service and the latter describes the type of service provider qualified to provide "registered nursing" and "specialized registered nursing."

Comment: Concerning the definition of "respite" in §45.103, a commenter requested that the proposed definition be replaced with the definition in the CMS-approved CLASS waiver renewal. The commenter also requested, if the proposed definition is retained in the adopted rules, the deletion of the phrases "who is awake" in subparagraph (A) and "money management" in subparagraph (A)(iv). The commenter noted that "money management is not an ADL.

Response: The agency declines to make the requested changes and responds that the proposed definition provides a level of specificity necessary to ensure respite services are delivered appropriately. Concerning the deletion of the phrase "who is awake," the agency responds that the individual must be awake to benefit from the activities listed in subparagraph (A). Concerning the deletion of "money management," because that activity is not an ADL, the agency responds that the activities listed in subparagraph (A) are not described as ADLs.

Comment: Concerning subparagraph (B) of the definition of respite in §45.103, a commenter questioned how the provision describes the delivery of respite to an individual.

Response: The agency responds that subparagraph (B) describes an activity, interacting with a person regarding an incident that directly affects the individual's health and safety, that is permissible for a service provider of respite to perform and for which a DSA may be compensated as respite.

Comment: Concerning subparagraph (C) of the definition of respite in §45.103, a commenter questioned how the listed activities can take place without face-to-face contact with the individual.

Response: The agency disagrees with the commenter's premise that respite activities must involve face-to-face interaction with an individual. The agency responds that the activities listed in subparagraph (C) typically are performed by an individual's unpaid caregiver on behalf of the individual but without directly involving the individual. Because respite is intended to provide temporary relief to the unpaid caregiver, these non face-to-face activities properly constitute respite.

Comment: A commenter requested that the definition of "specialized therapies" in §45.103 be revised to replace "create opportunities for socialization" with "maintain or retain opportunities for socialization."

Response: The agency disagrees and responds that the language as proposed accurately reflects the purpose of specialized therapies in the CLASS Program.

Comment: A commenter recommended changing the definition of "support family services" in §45.103 by replacing "training the individual" with "supporting the individual."

Response: The agency agrees and has revised the language as requested.

Comment: Concerning §45.201(b), a commenter recommended that the reference to the definition of "own or family home" in §45.103 be revised to include all subparagraphs in that definition.

Response: The agency disagrees and responds that the provision is specific to the types of facilities described in subparagraphs (A) - (G) of the definition, while subparagraph (H) does not describe a facility.

Comment: Concerning §45.212(a), a commenter recommended adding a requirement that the CMA must date stamp DADS written notification. The commenter recommended adding the same requirement of the DSA and the CMA to §45.212(n).

Response: The agency declines to add this requirement because a CMA and DSA are allowed other ways to demonstrate the date of receipt of a DADS notification.

Comment: Concerning §45.212(a)(1), a commenter stated that before the agency sends a referral letter to an individual, the agency should determine if the individual resides in the catchment area served by the CMA and DSA.

Response: The agency disagrees with the commenter's characterization of the rule provision. The agency explains that the CMA is required by §45.212(a)(1) to "verify" rather than "determine" that the individual resides in the catchment area of the chosen CMA and DSA. The agency further explains that before sending a written offer of a program vacancy to an individual, the agency determines which CMAs and DSAs have provider agreements for the catchment area in which the individual lives.

Comment: A commenter requested that §45.212(h)(1) be revised to permit an advanced practice registered nurse (APRN) to authorize an individual's diagnosis on the MR/RC Assessment to establish the individual's diagnostic eligibility for the CLASS Program. The commenter stated that Texas law allows physicians to delegate certain medical acts, including diagnosis and prescribing, to an APRN.

Response: The agency declines to make the requested revision and responds that the requirement as proposed is consistent with rules of other DADS Medicaid waiver programs serving in-

dividuals with intellectual and developmental disabilities and the ICF/MR Program, which require a physician to authorize the diagnosis that establishes an individual's diagnostic eligibility.

Comment: Concerning §45.212(j), a commenter requested the addition of a time frame for DADS to provide written notice to a DSA and CMA that that diagnostic eligibility has been approved for an individual. The commenter requested that time frames for DADS to provide written notice to a DSA or CMA be added to §§45.213, 45.214(e), 45.216, 45.224(c), 45.402(a), 45.403(b), 45.404(f), 45.405(b), 45.407(d), 45.408(c), 45.409(f), 45.603(b), 45.604(c) and (h), 45.606(d), and 45.613(b) and (g).

Response: The agency declines to make this change because the purpose of the CLASS rules is to set forth program requirements for program providers and, to a lesser extent, individuals in the CLASS Program. The purpose is generally not to prescribe specific administrative requirements for the agency.

Comment: Concerning §45.212(n), a commenter questioned whether the agency will continue to send written notification to a CMA when an individual's request for enrollment is approved.

Response: The agency responds that §45.212(n) references §45.216(d), which states "DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved."

Comment: Concerning §45.214(b), which lists the criteria that a case manager and the agency must use in evaluating the CLASS Program services included on a proposed IPC, a commenter recommended that "support community integration" be included as new paragraph (6). The commenter also requested the inclusion in §45.103 of a definition for "community integration" that is clear to persons applying for or receiving CLASS Program services and providers.

Response: The agency declines to add this language to §45.214(b) because it more aptly applies to the CLASS Program as whole, not to each service on an IPC. Therefore, the agency has revised §45.104(a), regarding description of the CLASS Program, to state that CLASS Program services are intended, as a whole, to enhance an individual's integration into the community, maintain or improve independent functioning, and prevent the individual's admission to an institution. The agency also declines to add a definition of "community integration" to §45.103 because the term is not used in the adopted rules.

Comment: Concerning §45.214(d)(2)(A), a commenter stated that the provision is unclear as to whether one or two IPCs are required and recommended omitting the phrase "in dispute and not in dispute and is signed and dated."

Response: The agency disagrees and responds that subsection (d) clearly directs the case manager to develop an IPC that the rule describes as the "proposed enrollment IPC." Further the agency declines to omit the phrase "in dispute and not in dispute and is signed and dated." This requirement is necessary so that the agency can properly determine whether the CLASS Program service that the individual is requesting should be authorized or, if not, can instruct the CMA to send the individual a notice of a right to request a fair hearing regarding the denied service.

Comment: Concerning §45.214(g), a commenter questioned whether the agency intends to continue the current practice of sending written authorization of the enrollment IPC to the CMA.

Response: The agency responds that, as stated in subsection (g), DADS will notify the CMA in writing when an enrollment IPC is authorized.

Comment: Concerning §45.214(h), a commenter stated that the CLASS waiver approved by CMS does not appear to include language permitting the agency to modify an IPC that has been agreed upon by all members of the service planning team. The commenter stated that the agency would need to deny the service or level of service as prepared by the service planning team and allow the individual to appeal. The commenter submitted similar comments in §§45.214(h), 45.223(i) and (j), and 45.225(d) and (e). In those additional sections, the commenter stated the agency cannot dictate implementation of a partial IPC, and that if the agency changes the IPC, the CMA and DSA need to reevaluate whether the individual's needs are able to be met in the community setting.

Response: The agency disagrees and responds that the CLASS Program waiver application renewal states in the "brief description of waiver" section on page three that "DADS authorizes the individual service plan and conducts utilization management." In addition, page six of the waiver renewal includes this statement: "The service plan is subject to the approval of the Medicaid agency." The agency further responds that §45.403 provides that an individual or LAR may appeal the agency's denial of a service on an enrollment, revision, or renewal IPC or through utilization review, and that §45.405 provides that an individual or LAR may appeal the agency's proposal to reduce the level of a service included on a proposed revision or renewal IPC or through utilization review.

Comment: Concerning provisions in §§45.214, 45.216, and 45.223 that describe DADS denial of a CLASS Program service or modification of an IPC, a commenter described the provisions as "repetitive information" that is "unnecessary and confusing." The commenter recommended substituting a reference to §45.225, concerning Utilization Review of an IPC by DADS for those provisions in each section.

Response: The agency disagrees and explains that each section cited by the commenter addresses a different process and the perceived repetitiveness of the detailed information is necessary. The agency further explains that §45.214 addresses the process for a CMA to develop an enrollment IPC, §45.216 describes a process for DADS to review an enrollment IPC, and §45.223 describes the process for a CMA to develop a renewal or revision IPC.

Comment: Concerning §45.222(b), a commenter stated that paragraphs (1) and (2) address the same issue and recommended deleting paragraph (1) and removing "other" from paragraph (2).

Response: The agency disagrees and declines to make the recommended changes. The agency explains that paragraph (1) addresses the effective date for the first renewal IPC following the expiration of the enrollment IPC, while paragraph (2) addresses the effective date of each subsequent renewal IPC.

Comment: Concerning §45.222(c), a commenter stated that paragraphs (1) and (2) are redundant and recommended rewording paragraph (1) to reference "the IPC period of the individual's IPC" and deleting paragraph (2).

Response: The agency disagrees and declines to make the recommended changes. The agency explains that paragraph (1) is

specific to the IPC period of an enrollment IPC, while paragraph (2) is specific to the IPC period of a renewal IPC.

Comment: Concerning §45.223(a), a commenter stated that the language appears to be intended to require quarterly visits by the case manager during the IPC year, but instead specifies a single visit to occur not later than the 90th day after the first day of the IPC period. The commenter recommended substituting "Before the 90th calendar day" for "At least every 90 calendar days" in the first sentence of subsection (a) and adding "will make additional quarterly visits with no more that 90 days between each visit throughout the IPC period" to the end of the last sentence of the subsection.

Response: The agency agrees that this language could be made clearer and has revised this subsection to clarify that the case manager must, beginning the effective date of an individual's IPC, meet with the individual every 90 calendar days.

Comment: Concerning §45.223(e)(3), a commenter stated that the provision is unclear as to whether one or two IPCs are required.

Response: The agency disagrees and responds that the provision clearly states that the case manager must send a copy of either the proposed renewal IPC or the proposed revised IPC to the CDSA.

Comment: Concerning §45.223(h), a commenter questioned whether DADS intends to continue to provide written notice to the CMA when the IPC is authorized. The commenter also asked how soon after an IPC is approved DADS expects a new service to be implemented.

Response: The agency responds that the provision clearly states that DADS will notify the CMA, in writing, that the IPC is authorized. Regarding the commenter's question of when a new service is implemented, the CMA and the DSA must provide DADS authorized services as described in the individual's IPP.

Comment: Concerning §45.223(k), a commenter stated that the provision inappropriately mentions the enrollment IPC, and recommended rewording the provision to read: "The effective date of a revised IPC will be the day it becomes effective, however the IPC period is the same as the IPC period of the enrollment or renewal IPC being revised."

Response: The agency disagrees and responds the provision, as proposed, accurately reflects that a revised IPC might be a revision of the enrollment IPC, or it might be a revision of a renewal IPC.

Comment: Concerning §45.225(d), a commenter asked whether DADS conducts utilization review of a random sampling of the IPCs submitted or is each IPC subject to utilization review.

Response: The agency responds that each IPC is subject to utilization review.

Comment: Concerning §45.301, a commenter requested that DADS provide a definition or clarification of "reasonable promptness".

Response: The agency responds that the term "reasonable promptness" in this context is derived from federal regulations regarding fair hearings for Medicaid applicants and recipients, specifically 42 CFR §431.220(a)(1). The federal regulations do not define the term "reasonable promptness" presumably because the amount of time the term allows, in the discretion of a fact finder, depends on the facts and circumstances of a particular case. DADS declines to develop a definition of this term for the same reason.

Comment: Concerning §45.302(5)(E), a commenter requested the deletion of "scheduled" and "mutually agreed time," stating that a provider may attempt to coordinate meetings with the individual, but may need to make an unscheduled visit to perform a supervisory visit or for other valid reasons.

Response: The agency declines to make the change because an individual could not reasonably be required to notify a CMA or DSA, in advance, of the individual's unavailability for an unscheduled meeting. The agency further responds that the phrase "mutually agreed time" is not used in the proposal.

Comment: Concerning §45.404(a)(2), a commenter recommended replacing the proposed text with the following: "the suspension begins the first day the individual leaves the state and continues up to 180 days."

Response: The agency disagrees and explains that the suggested substitution for (a)(2) would render the sentence grammatically incorrect since it does not improve the clarity of the rule.

Comment: Concerning §45.407(b), which requires a CMA to facilitate at least one face-to-face meeting with an individual or LAR when attempting to resolve an individual's failure to comply with a mandatory participation requirement, a commenter stated that such a contact is not always possible. The commenter stated that face-to-face contact may not be possible when the health and safety of a case manager or service provider is an issue or the individual refuses to allow the case manager to enter the individual's home. The commenter recommended adding language in subsection (b) providing an exception to the requirement for at least one face-to-face meeting when the health and safety of a provider is at issue. The commenter also recommended adding "if appropriate" at the end of subsection (c)(2), which requires the CMA to provide documentation of the attempts by the CMA and DSA to resolve the situation, including face-to-face meetings.

Response: The agency disagrees and declines to make the recommended revisions. The agency responds that if a CMA or DSA believes the health and safety of a case manager or other service provider is placed in immediate jeopardy due to behavior exhibited by an individual or a person in the individual's residence, the CMA or DSA must file a report with the appropriate law enforcement agency and request that DADS terminate the individual's CLASS Program services as described in §45.409.

Comment: Concerning §45.408(d), which requires a CMA to send written notice to an individual or LAR that DADS has authorized the termination of the individual's CLASS Program services, a commenter questioned how a notice can be sent if the termination is authorized by DADS because, as described in subsection (a)(3), the individual's whereabouts are unknown and the post office returns mail sent to the individual by the CMA or DSA, indicating no forwarding address.

Response: The agency responds that DADS expects the CMA to send the written notice of termination of CLASS Program services to the individual's last known address, even if the post office has returned mail to the CMA indicating no forwarding address for the individual.

Comment: Concerning §45.409(b)(1), a commenter recommended revising the provision to require that a CMA or DSA immediately file a report with the appropriate law enforcement

agency only if appropriate. The commenter stated that such a report is not always necessary.

Response: The agency disagrees and explains that an immediate report to the appropriate law enforcement agency is always appropriate if an individual or a person in the individual's residence exhibits behavior that places the health and safety of the CMA's case manager or a DSA's service provider in immediate jeopardy.

Comment: Concerning §45.409(g), a commenter questioned why this section contains a time frame for the CMA to send a written notice of termination to the individual or LAR when other sections describing circumstances when CLASS Program services can be terminated contain no time frame for sending the written notice.

Response: The agency responds that a time frame is included in §45.409 because the termination of CLASS Program services without advance notice under this section is more likely to create a health and safety risk to the individual than the termination of services under §§45.406 - 45.408, which are made with advance notice or are made under circumstances in which the individual is not wanting or needing CLASS Program services.

Comment: Concerning §§45.603(c), 45.604(d) and (i), and 45.613(c) and (h), in which the agency specifies how it will notify a DSA when a proposed IPC is authorized, a commenter questioned how the agency will notify the CMA when a proposed IPC is authorized.

Response: The agency agrees that it is not clear if the agency notifies the CMA of the authorized IPC and has revised §§45.603(c), 45.604(d) and (i), and 45.613(c) and (h) by adding a statement that "DADS notified a CMA, in writing, of whether the proposed IPC is authorized."

Comment: Concerning the title of §45.604, a commenter requested that the phrase "Costing More than $500" be revised to read "Costing $500 or More."

Response: The agency agrees and has revised the title as requested.

Comment: Concerning §45.606(a), a commenter requested that the agency add language permitting a program provider to annually choose a single supplier of adaptive aids in lieu of obtaining three bids for the purchase of an adaptive aid. The commenter stated that this would be consistent with the practice of other waiver programs, such as the Community Based Alternatives Program.

Response: The agency responds that the rules do not require a program provider to obtain bids for an adaptive aid costing less than $500. For an adaptive aid costing $500 or more, the agency declines to make the requested change. For purposes of cost-effectiveness and fiscal accountability, the agency is requiring the program provider to obtain three comparable bids from vendors or provide written justification for obtaining less than three bids because the adaptive aid is available from a limited number of vendors. This requirement is consistent with the HCS Program.

Comment: Concerning §45.609(a)(2)(B), a commenter requested the addition of a requirement that the DSA send a copy of the completed Documentation of Completion of Purchase form to the case manager.

Response: The agency disagrees and declines to make the requested revision, explaining that the provision as proposed requires the DSA to complete the form in accordance with the *CLASS Provider Manual.* The agency further explains that the instructions for the form, as contained in the manual, direct the DSA's service provider to send a copy of the completed form to the case manager within seven business days of verifying that the adaptive aid was delivered and the individual's satisfaction was assessed.

Comment: Concerning §45.617(b), a commenter requested the addition of language directing the DSA to notify the case manager in addition to the individual or LAR when a minor home modification will not be completed within the projected time frame.

Response: The agency agrees and has revised the rule as requested.

Comment: Concerning §45.704 and §45.804, a commenter requested a more specific web address for the DADS computer-based CLASS Program Basic Training. The commenter asked about the status of the computer-based training program and whether it will allow a CMA or DSA to print a certificate of completion to show compliance with this rule.

Response: The agency declines to make the requested change and has changed the reference *"www.dads.state.tx.us"* (the DADS website address) to "DADS website" in the event the website address changes in the future. Concerning the status of the computer-based training program, the agency responds that the training program is near completion and that a CMA and DSA will be able to print a certificate of completion of the program.

Comment: Concerning §45.803, concerning qualifications of DSA Staff Persons, a commenter stated that the section should include a requirement that a DSA conduct background checks of unlicensed personnel.

Response: The agency disagrees and declines to add the requested requirement. The agency explains that a DSA is required by its contract with DADS to be licensed as a home and community support services agency in accordance with 40 TAC Chapter 97. The licensure rules in §97.247 include requirements to conduct background checks of an unlicensed applicant for employment or a volunteer position and an unlicensed employee or volunteer.

Comment: Concerning §45.803(b)(2), which states that a service provider for a direct service may not be a relative of the individual receiving that service, except for a service provider of habilitation or respite who may be a relative unless prohibited by another provision in the section, a commenter stated that the waiver permits any service provider to be a family member unless the service provider is the parent of the individual who is a minor child or the spouse of the individual.

Response: The agency disagrees and responds that the CLASS Program waiver application renewal prohibits a CLASS Program service provider from being a relative of an individual. The exception to this prohibition is that a service provider of habilitation, prevocational services, respite, and supported employment may be a relative of the individual, but may not be the parent of a minor individual, or the spouse of an individual. As discussed earlier in this preamble, the agency revised renumbered paragraph (17) of subsection (d) to add prevocational services to the list of direct services for which a parent of an individual who is under 18 or a spouse of an individual may not be a service provider. This change was made because that service was inadvertently excluded from this provision in the proposed rule.

Comment: Concerning §45.803(c)(4), which states that a DSA must have a program director who "is not a relative of an individual being served by the DSA," a commenter stated that provision is very restrictive.

Response: The agency disagrees and explains that the intent is to prevent potential conflicts of interest that could inappropriately impact the provision of services to individuals.

Comment: Concerning §45.803(d)(1), which requires a qualified service provider of registered nursing or specialized registered nursing to be a registered nurse, commenter recommended adding that the registered nurse must be licensed in accordance with Texas Occupations Code, Chapter 301.

Response: The agency disagrees and explains that the definition of "registered nurse" in §45.103 already specifies that an RN must be licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

Comment: Concerning §45.803(d)(14)(A), one commenter stated that DADS should not require a licensed psychologist, as a condition of employment, to obtain additional certification as a behavior analyst from the BACB. The commenter stated that the TPA "maintains that behavioral services are within the legal scope of practice of licensed psychologists." The commenter stated that requiring a psychologist to obtain certification by the BACB creates "a burden of bureaucratic oversight that is redundant, unnecessarily costly for service providers (discouraging their participation in this much needed area), and of no proven benefit in protecting the public.

Response: The agency responds that the proposed rules do not require a licensed psychologist to obtain certification as a behavior analyst from the BACB. The provision requires a provider of behavioral support to be one of the six listed professionals and have received training in behavioral support or have experience in providing behavioral support.

Comment: Also concerning §45.803(d)(14)(A), six commenters stated that the needs of an individual for whom behavioral support services are requested are serious and warrant referral to a provider with specific training, expertise, and certification or licensure in providing behavioral supports. The commenters stated that the proposed provision will result in Texas entrusting these services for this vulnerable population to professionals with no specific training and no specific experience in the area of behavioral support services.

Response: The agency disagrees and responds that the professionals listed as qualified service providers of behavioral support in the rule are qualified to provide behavioral supports and must provide those services in accordance with the appropriate licensure or certification standards.

Comment: Concerning §45.803(d)(14)(A)(iii), one commenter requested that DADS clarify in the final rule that a licensed psychological associate must work under the supervision of a licensed psychologist or work as an employee of an exempt agency and be providing the service for that agency (e.g. community mental health and mental retardation center).

Response: The agency declines to revise the rule as requested and explains that Texas State Board of Examiners of Psychologists rules address the requirements for the practice of psychology, including 40 TAC §463.1(1), which states that a licensed psychological associate must practice under the supervision of a licensed psychologist.

Comment: Concerning §45.803(d)(14)(A)(iv), ten commenters stated that licensed social workers have the knowledge and training to provide appropriate behavioral supports to individuals enrolled in the CLASS Program. The commenters stated that access to behavioral support services is a major problem in certain parts of the state and that the addition of licensed social workers to the list of qualified providers will increase access to these services.

Response: The agency acknowledges the commenters' assurances that a licensed social worker has the knowledge and training to provide behavioral support to individuals enrolled in the CLASS Program.

Comment: Concerning §45.803(d)(14)(A)(iv) and (v), six commenters objected to the inclusion of licensed social workers and licensed professional counselors on the list of professionals who can be qualified service providers of behavioral support. The commenters stated that these professionals lack the necessary training, professional supervision, or experience to provide behavioral support. The commenters stated that the application of applied behavior analysis techniques requires a very specialized skill set that is acquired only through considerable training and experience, and stated that only a person who is a licensed psychologist, licensed psychological associate, or a behavior analyst certified by the BCBA has that specialized skill set. The commenters state that the practice guidelines for both licensed social workers and licensed professional counselors mention behavioral approaches or behavior disorders in their practice guidelines, but assert that such mentions are within the context of providing therapy or counseling services only.

Response: The agency disagrees that a licensed social worker and a licensed professional counselor are categorically unqualified to provide behavioral support as defined in the proposed rules. The agency states that a provider of behavioral support must provide that service in accordance with the appropriate licensure or certification standards.

Comment: Also concerning §45.803(d)(14)(A)(iv) and (v), two commenters recommended that a licensed social worker or licensed professional counselor who wants to provide behavioral support should seek certification as a behavior analyst from the BCBA.

Response: The agency declines to make this change and responds that a licensed social worker and a licensed professional counselor are qualified independently to provide behavioral support and do not need to obtain certification as a behavior analyst.

Comment: Two commenters characterized §45.803(d)(14)(B) as permitting behavioral support to be provided by a person with no training in the provision of behavioral support if the person has "some undefined amount and quality of experience."

Response: The agency responds that a qualified provider must, in accordance with the provider's licensure or certification standards, have the appropriate training and experience to provide behavioral support.

Comment: Concerning §45.804(b)(2), a commenter recommended that the training in cardiopulmonary resuscitation (CPR) and choking prevention required for a service provider of habilitation should be delivered by a nationally recognized organization that requires hands-on evaluation of skills by an authorized instructor. The commenter also recommended that service providers of habilitation be certified in CPR and choking prevention.

Response: The agency agrees that training in CPR and choking prevention for a service provider of habilitation should be delivered by a qualified instructor and require hands-on evaluation of skills by the instructor and has revised §45.804(b)(2) accordingly. The agency declines to require that a "nationally recognized organization" provide the training because it is unclear how that term would be interpreted. In addition, the agency does not want to exclude reputable organizations that are not nationally known. The agency also declines to require service providers of habilitation to be certified in CPR because not all organizations that provide this training have a process to "certify" participants.

Comment: Concerning §45.901 and §45.902, a commenter asked where these requirements are included in the rule.

Response: The agency does not understand the comment, but explains that the two sections are similar to former §45.401 and §45.403, which are being repealed to allow for a more logical organization of the rules. Terminology in the sections has been updated from that in the repealed sections.

Comment: A commenter recommended that §45.902(6) be revised to acknowledge that an advanced practice registered nurse (APRN) in Texas may legally issue orders for nursing, occupational therapy, and speech pathology services. The commenter stated that a delay in service provision can occur for an individual enrolled in the CLASS Program if program rules require a physician's authorization or orders, despite the fact that the individual's primary provider is actually an advanced practice registered nurse. The commenter further stated that an individual's best interest is served when the practitioner who regularly sees the patient is the one who orders therapy services.

Response: The agency agrees and has revised the provision to state that an order for one of the listed services must be issued by a licensed health care professional legally authorized to issue such an order.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§45.101 - 45.105

The new sections 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.

§45.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive aid--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual;* or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) ADL--Activity of daily living.

(4) Aquatic therapy--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(5) Auditory integration training/auditory enhancement training--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(6) Behavior support plan--An individualized written plan prescribing the systematic application of behavioral techniques and containing specific objectives to decrease or eliminate targeted behavior.

(7) Behavioral Support--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) assessment of the targeted behavior so that a behavior support plan may be developed;

(B) development of an individualized behavior support plan;

(C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluation of the effectiveness of the behavior support plan;

(E) modification, as necessary, of the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and

(F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control maladaptive or socially unacceptable behaviors.

(8) Business day--A day when DADS state office is open.

(9) Case management--A service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's IPC;

(D) coordinating the provision of CLASS Program services;

(E) monitoring the effectiveness of the CLASS Program services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(10) Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(11) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions) in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(12) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title that provides financial management services.

(13) CMA--Case management agency. A program provider that contracts with DADS to provide case management.

(14) CLASS Program--The Community Living Assistance and Support Services Program.

(15) CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(16) Competitive employment--Employment that pays an individual at or above the greater of:

(A) the applicable minimum wage; or

(B) the prevailing wage paid to individuals without disabilities for performing the same or similar work.

(17) Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(18) DADS--The Texas Department of Aging and Disability Services.

(19) Denial--An action taken by DADS that:

(A) rejects an individual's request for enrollment into the CLASS Program;

(B) disallows a CLASS Program service requested on an IPC that was not authorized on the prior IPC; or

(C) disallows a portion of the amount or level of a CLASS Program service requested on an IPC that was not authorized on the prior IPC.

(20) Dental treatment--A service that:

(A) consists of the following:

(i) emergency dental treatment, which is procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures;

(ii) routine preventative dental treatment, which is examinations, x-rays, cleanings, sealants, oral prophylaxes, and topical fluoride applications;

(iii) therapeutic dental treatment, which includes fillings, scaling, extractions, crowns, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development;

(iv) orthodontic dental treatment, which is procedures that include treatment of retained deciduous teeth; cross-bite therapy; facial accidents involving severe traumatic deviations; cleft palates with gross malocclusion that will benefit from early treatment; and severe, handicapping malocclusions affecting permanent dentition with a minimum score of 26 as measured on the Handicapping Labio-lingual Deviation Index; and

(v) dental sedation, which is sedation necessary to perform dental treatment including non-routine anesthesia, (for example, intravenous sedation, general anesthesia, or sedative therapy prior to routine procedures) but not including administration of routine local anesthesia only; and

(B) does not include cosmetic orthodontia.

(21) Direct services--CLASS Program services other than case management, financial management services, support consultation, support family services, continued family services, or transition assistance services.

(22) DSA--Direct services agency. A program provider that is a HCSSA that contracts with DADS to provide direct services.

(23) DFPS--The Texas Department of Family and Protective Services.

(24) Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(25) Financial management services--A service, as defined in §41.103 of this title, that is provided to an individual who chooses to participate in CDS.

(26) Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of maladaptive behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual; and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(27) HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code Chapter 142.

(28) HHSC--The Texas Health and Human Services Commission.

(29) Hippotherapy--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(11) of this chapter (relating to Qualifications of DSA Staff Persons).

(30) MR--Intermediate care facility for persons with mental retardation or related conditions.

(31) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(32) Institutional services--Medicaid-funded services provided in a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242, or in an ICF/MR certified by DADS for a capacity of more than six persons.

(33) Integrated employment--Employment at a work site that provides an individual with an opportunity for routine interaction with people without disabilities other than the individual's work site supervisor or service providers.

(34) IPC--Individual plan of care. A written plan developed by an individual's service planning team that:

(A) describes:

(i) the type and amount of each CLASS Program service to be provided to the individual; and

(ii) services and supports to be provided to the individual through non-CLASS Program resources including natural supports, medical services, and educational services; and

(B) is authorized by DADS in accordance with Subchapter B of this chapter.

(35) IPC cost--The estimated annual cost of CLASS Program services on an IPC.

(36) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(j) of this chapter (relating to Development of Enrollment IPC), until the first calendar day of the same month of the effective date in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(37) IPP--Individual program plan. A written plan that describes the goals and objectives to be met by the provision of each CLASS Program service on an individual's IPC that:

(A) are supported by justifications;

(B) are measurable; and

(C) have timelines.

(38) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(39) Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(40) Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(41) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(42) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(43) Mental retardation--Consistent with Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

(44) Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the *CLASS Provider Manual;* or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(45) Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(46) Natural supports--Assistance from persons, including family members and friends, that helps an individual live in a community and that occurs naturally within the individual's environment.

(47) Nutritional services--The provision of nutrition services as defined in Texas Occupations Code, Chapter 701.

(48) Occupational therapy--The practice of occupational therapy as described in Texas Occupations Code, Chapter 454.

(49) Own home or family home--A residence that is not:

(A) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with mental retardation, a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(50) Physical therapy--The provision of physical therapy as defined in Texas Occupations Code, Chapter 453.

(51) Physician--A person who is licensed as a physician by the Texas State Board of Medical Examiners in accordance with Chapter 155 of the Texas Occupations Code or is licensed as physician or osteopath in accordance with the laws of Oklahoma, New Mexico, Arkansas, or Louisiana.

(52) Prevocational services--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group instruction regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's habilitation plan;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(53) Program provider--An entity that delivers CLASS Program case management or direct services under a provider agreement.

(54) Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to provide CLASS Program services.

(55) Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(56) Reduction--An action taken by DADS as a result of a review of a revised IPC or renewal IPC that decreases the amount or level of a service authorized by DADS on the prior IPC.

(57) Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(58) Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.

(59) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(60) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual*.

(61) Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.

(62) Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support and is not a service provider of habilitation, support family services, or continued family services or an employee in the CDS option of habilitation. Respite services consist of the following:

(A) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) ambulation and mobility;

(iv) money management;

(v) community integration;

(vi) use of adaptive equipment;

(vii) self-administration of medication;

(viii) reinforce any therapeutic goal of the individual;

(ix) provide transportation to the individual; and

(x) protect the individual's health, safety, and security;

(B) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(C) performing one of the following activities that does not involve interacting face-to-face with an individual:

(i) shopping for the individual;

(ii) planning or preparing meals for the individual;

(iii) housekeeping for the individual;

(iv) procuring or preparing the individual's medication;

(v) arranging transportation for the individual; or

(vi) protecting the individual's health, safety, and security while the individual is asleep.

(63) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or change the amount of an existing service.

(64) Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

(A) the individual;

(B) if applicable, the individual's LAR;

(C) the case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and

(F) a person selected by the DSA, with the approval of the individual or LAR, who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(65) Service provider--A person who is an employee or contractor of the DSA who provides a direct service.

(66) Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(67) Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(68) Speech therapy--The provision of speech-language pathology as defined in Texas Occupations Code, Chapter 401.

(69) Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) nutritional services;

(F) recreational therapy; and

(G) therapeutic horseback riding.

(70) Staff person--A full-time or part-time employee of the program provider.

(71) Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in CDS.

(72) Supported employment--A service that assists an individual to sustain competitive, integrated employment.

(73) Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by supporting the individual to acquire, maintain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(74) Therapeutic horseback riding--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by only one service provider as described in §45.803(d)(10) of this chapter.

(75) Temporary admission--Being admitted for 180 consecutive calendar days or less.

(76) Transition assistance services--Services provided to a person who is receiving institutional services and is eligible for and enrolling into the CLASS Program. A more detailed description of this CLASS Program service is contained in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).

§45.104. Description of the CLASS Program.

(a) The CLASS Program is a Medicaid waiver program approved by CMS under §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/MR Program. CLASS Program services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution.

(b) DADS operates the CLASS Program under the authority of HHSC.

(c) DADS limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(d) The CLASS program offers the following services:

(1) adaptive aids;

(2) auditory integration training/auditory enhancement training;

(3) behavioral support;

(4) case management;

(5) dental treatment;

(6) financial management services (only in CDS option);

(7) habilitation

(8) licensed vocational nursing;

(9) minor home modifications;

(10) occupational therapy;

(11) physical therapy;

(12) prevocational services;

(13) registered nursing;

(14) respite, which consists of:

(A) in-home respite; and

(B) out-of-home respite;

(15) speech therapy;

(16) specialized licensed vocational nursing;

(17) specialized registered nursing;

(18) specialized therapies, which consist of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) nutritional services;

(F) recreational therapy; and

(G) therapeutic horseback riding;

(19) support consultation (only in CDS option);

(20) support family services;

(21) continued family services;

(22) supported employment; and

(23) transition assistance services.

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 March 1, 2011.

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 1. ELIGIBILITY AND MAINTENANCE OF INTEREST LIST

40 TAC §45.201, §45.202

The new sections 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.

§45.201. Eligibility Criteria.

(a) An individual is eligible for CLASS Program services if:

(1) the individual is financially eligible for Medicaid because the individual receives supplemental security income (SSI) cash benefits or is determined by HHSC to be financially eligible for Medicaid;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for habilitation;

(5) the individual has an IPC cost for CLASS Program services at or below 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR, as of August 31, 2010, to an individual who meets the diagnostic eligibility criteria described in §9.239 of this title considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program);

(6) the individual is not enrolled in another Medicaid waiver program; and

(7) the individual resides in the individual's own home or family home.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(49)(A) - (G) of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

§45.202. Interest List.

(a) DADS maintains an interest list with the names of those persons interested in receiving CLASS Program services.

(1) To place an individual's name on the interest list, the individual or LAR must call the CLASS Program toll-free number, which is 1-877-438-5658.

(2) DADS places an individual's name on the interest list in the order in which the request is received and assigns the individual a request date.

(3) DADS removes an individual's name from the interest list if:

(A) the individual or LAR has requested in writing that the individual's name be removed from the interest list;

(B) the individual is deceased;

(C) the individual moves out of the state of Texas;

(D) the individual or LAR has not responded to DADS attempts to contact the individual or LAR during a periodic update of the CLASS interest list;

(E) the individual receives an offer of a program vacancy as described in §45.211(a) of this subchapter (relating to Written Offer of a CLASS Program Vacancy); or

(F) DADS withdraws an offer of a program vacancy in accordance with §45.211(d) of this subchapter.

(b) If DADS removes an individual's name from the interest list in accordance with subsection (a)(3)(D) of this section, the individual or LAR may request that DADS review the circumstances under which the individual's name was removed and reinstate the individual's name to the interest list with the registration date assigned before the individual's name was removed (that is, the original registration date).

(c) If DADS receives a request to reinstate the individual's name, as described in subsection (b) of this section, within 90 calendar days after DADS removal of the individual's name from the interest list, DADS reinstates the name with the original registration date. If DADS receives the request to reinstate more than 90 calendar days after DADS removal of the individual's name from the interest list, DADS may at its discretion reinstate the individual's name to the interest list with the original registration date.

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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DIVISION 2. ENROLLMENT PROCESS

40 TAC §§45.211 - 45.217

The new sections 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.

§45.211. Written Offer of a CLASS Program Vacancy.

(a) When a CLASS Program vacancy occurs, DADS sends a written offer in accordance with this subsection.

(1) DADS sends the written offer of a program vacancy to:

(A) the individual whose registration date is earliest on the CLASS Program interest list; or

(B) an individual who is on the CLASS Program interest list and is receiving institutional services.

(2) DADS encloses with the written offer:

(A) a Selection Determination form which includes a list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) a CLASS Applicant Acknowledgement form.

(b) The individual or LAR accepts DADS offer of a CLASS Program vacancy by:

(1) documenting the selection of one CMA and one DSA on the Selection Determination form; and

(2) returning the completed Selection Determination form to DADS within 30 calendar days after the date of the written offer from DADS.

(c) Upon receipt of a Selection Determination form completed by the individual or LAR, DADS notifies the CMA and DSA selected by the individual or LAR.

(d) DADS withdraws an offer of a program vacancy made to an individual if:

(1) after 30 calendar days from the date of the written offer, the individual has not submitted a completed Selection Determination form to DADS;

(2) the individual or LAR declines CLASS Program services;

(3) the individual or LAR does not complete the enrollment process as described in §45.212 of this division (relating to Process for Enrollment of an Individual); or

(4) the individual was offered a program vacancy because the individual is receiving institutional services and the individual moves out of the ICF/MR or nursing facility before the effective date of the enrollment IPC.

§45.212. Process for Enrollment of an Individual.

(a) Upon notification by DADS that an individual selected the CMA as a program provider, a CMA must assign a case manager to perform the following functions within 14 calendar days of DADS notification to the CMA:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a CLASS Program provider agreement;

(2) conduct an initial face-to-face, in-home visit with the individual and LAR or person actively involved with the individual and during the visit provide an oral and written explanation of the following to the individual and LAR or person actively involved with the individual:

(A) CLASS Program services;

(B) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(C) the CDS option as described in §45.217 of this division (relating to CDS Option);

(D) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(E) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858);

(F) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §45.707(c)(1) of this chapter (relating to CMA: Quality Management and Complaint Process);

(G) voter registration, if the individual is 18 years of age or older; and

(H) transition assistance services, if the individual is receiving institutional services; and

(3) obtain the signature of the individual or LAR on a Verification of Freedom of Choice form designating the choice for the individual of CLASS Program services over enrollment in the ICF/MR Program.

(b) The CMA must:

(1) within two business days of the case manager's face-to-face, in-home visit required by subsection (a)(2) of this section:

(A) collect and maintain the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the *CLASS Provider Manual;* and

(B) provide the individual's selected DSA with the collected information required by subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility as required by §45.302(1) of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrollment into CLASS Program services.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face, in-home visit as required by §45.302(1) of this chapter, but is making good faith efforts to complete the application, the CMA may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (1) of this subsection.

(1) The CMA may not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial face-to-face, in-home visit.

(2) The CMA must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC as required by §45.302(1) of this chapter and is not making good faith efforts to complete the application, the CMA must request, in writing, that DADS withdraw the offer of a program vacancy made to the individual in accordance with §45.211(d)(3) of this subchapter (relating to Written Offer of a CLASS Program Vacancy).

(e) If DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to an individual because they have determined that they cannot ensure the individual's health and safety, the CMA must provide to DADS, in writing, the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(f) If the individual is receiving institutional services and anticipates needing transition assistance services, the case manager must, before the effective date of the enrollment IPC:

(1) provide the individual or LAR with a list of provider agencies of transition assistance services; and

(2) using the Transition Assistance Services Assessment and Authorization form as described in the *CLASS Provider Manual*, assist the individual or LAR to:

(A) identify the individual's essential needs for transition assistance services; and

(B) provide estimated amount of transition assistance services needed by the individual.

(g) A DSA must, after receiving notice from DADS that an individual selected the DSA as a program provider:

(1) assign a registered nurse to perform the following functions within 14 calendar days after information is provided to the DSA by the CMA as required by subsection (b)(1)(B) of this section:

(A) conduct an initial face-to-face, in-home visit with the individual and LAR or person actively involved with the individual;

(B) perform nursing and adaptive behavior assessments of the individual; and

(C) complete the Mental Retardation/Related Conditions (MR/RC) Assessment in accordance with the *CLASS Provider Manual;* and

(2) within 14 calendar days after information is provided to the DSA by the CMA as required by subsection (b)(1)(B) of this section, inform the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services provided by the DSA as required by §45.808(1) of this chapter (relating to DSA: Complaint Process).

(h) A DSA must ensure that:

(1) the diagnosis of the individual's condition documented on the MR/RC Assessment is authorized by a physician; and

(2) the completed MR/RC assessment is submitted to DADS for a decision regarding the individual's diagnostic eligibility.

(i) DADS reviews the completed MR/RC Assessment in accordance with §45.213 of this division (relating to Determination of Diagnostic Eligibility by DADS).

(j) If a DSA receives written notice from DADS that diagnostic eligibility is approved for an individual, as described in §45.213(d), the DSA must notify the individual's CMA of DADS decision within one business day after receiving the notice from DADS.

(k) If DADS denies diagnostic eligibility, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program in accordance with §45.402(b) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program).

(l) If the CMA receives notice from the DSA that DADS approves diagnostic eligibility, the CMA must ensure that a proposed enrollment IPC, habilitation plan, and IPPs for the individual are developed and submitted to DADS for review in accordance with §45.214 of this division (relating to Development of Enrollment IPC).

(m) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS review of an Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division; and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division.

(n) If DADS notifies the individual's CMA, in accordance with §45.216(d) of this division, that the individual's request for enrollment is approved:

(1) the CMA must, within one business day after DADS notification, notify the individual or LAR and the individual's DSA of DADS decision; and

(2) the CMA and DSA must initiate CLASS Program services for the individual in accordance with the individual's IPC within seven calendar days after DADS notification.

(o) If DADS notifies the CMA that the individual's request for enrollment is approved but action is being taken as described in §45.216(e) of this division, including modifying the individual's proposed enrollment IPC, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

(p) The CMA and DSA must not provide CLASS Program services to an individual until notified by DADS that the individual's request for enrollment into the CLASS Program has been approved.

§45.213. Determination of Diagnostic Eligibility by DADS.

(a) DADS reviews the completed Mental Retardation/Related Conditions (MR/RC) Assessment submitted by an individual's DSA as required by §45.212(h)(2) of this division (relating to Process for Enrollment of an Individual) and §45.221(a) of this subchapter (relating to Annual Review and Reinstatement of Diagnostic Eligibility) to determine if the MR/RC Assessment evidences that an individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria).

(b) If requested by DADS, the DSA must submit current data obtained from standardized evaluations and formal assessments to support the related condition diagnosis required by §45.201(a)(3) of this subchapter.

(c) If DADS determines that the completed MR/RC Assessment and supporting documentation evidences that the individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter, DADS approves diagnostic eligibility for the individual.

(d) If DADS approves diagnostic eligibility for the individual, DADS notifies the individual's DSA of the approval, in writing. If DADS denies diagnostic eligibility for the individual, DADS notifies the individual's DSA and CMA of the denial, in writing.

(e) DADS approval of diagnostic eligibility is effective:

(1) the date DADS receives the completed MR/RC Assessment; and

(2) through the last calendar day of the IPC period.

§45.214. Development of Enrollment IPC.

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS approval of diagnostic eligibility for an individual as required by §45.212(j) of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a habilitation plan, as described in the *CLASS Provider Manual*, based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(g) of this chapter (relating to Process for Enrollment of an Individual); and

(B) a proposed enrollment IPC that specifies:

(i) the type of CLASS Program service to be provided to an individual;

(ii) the number of units of each CLASS Program service to be provided to the individual; and

(iii) any other service or support to be provided to the individual through sources other than the CLASS Program; and

(2) develops an IPP for each CLASS Program service listed on the proposed enrollment IPC.

(b) The case manager must ensure that each CLASS Program service on the proposed enrollment IPC:

(1) is necessary to protect the individual's health and welfare in the community;

(2) addresses the individual's related condition;

(3) is not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) is the most appropriate type and amount of CLASS Program service to meet the individual's needs; and

(5) is cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs; and

(iii) the habilitation plan; and

(B) send a copy of the proposed enrollment IPC to the CDSA, if applicable.

(d) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications) the CMA must:

(1) in accordance with *CLASS Provider Manual*, send the individual or LAR written notice of the denial of the requested CLASS Program service, copying the DSA and CDSA;

(2) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(A) the proposed enrollment IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the IPPs; and

(C) the habilitation plan; and

(3) send a copy of the proposed enrollment IPC to the CDSA, if applicable.

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS Review of an Enrollment IPC). At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS request.

(f) If DADS determines that the proposed enrollment IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria), DADS notifies the CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(g) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in subsection (b) of this section, DADS notifies the individual's CMA, in writing, that the IPC is authorized.

(h) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in subsection (b) of this section, DADS:

(1) denies the service(s);

(2) modifies the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(i) If DADS notifies the CMA that the individual's CLASS Program services have been denied and the proposed enrollment IPC modified in accordance with subsection (h) of this section, the CMA must:

(1) implement the modified IPC; and

(2) send written notice to the individual or LAR of the denial of CLASS Program Services, in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

(j) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(d) or (e) of this division.

(k) An enrollment IPC is effective for an IPC period.

(l) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

§45.215. Development of IPPs.

(a) The case manager must:

(1) develop an IPP for each CLASS Program service listed on a proposed enrollment IPC, and submit the IPPs to DADS in accordance with §45.214 of this division (relating to Development of an Enrollment IPC); and

(2) develop a new or revised IPP for each CLASS Program service and submit the IPPs to DADS in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

(b) The case manager must ensure that the each IPP is reviewed, signed, and dated as evidence of agreement by:

(1) the individual or LAR;

(2) the case manager; and

(3) the DSA.

§45.216. DADS Review of an Enrollment IPC.

(a) DADS reviews a proposed enrollment IPC, habilitation plan, and IPPs submitted by a CMA in accordance with §45.214 of this division (relating to Development of Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division; and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division.

(b) At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that the proposed enrollment IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the requirements in §45.214(a)(1)(B) of this division and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division, DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved.

(e) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in §45.214(b) of this division or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies the service(s);

(2) modifies and authorizes the IPC;

(3) approves the individual's request for enrollment with the modified IPC; and

(4) notifies the individual's CMA, in writing, of the action taken.

(f) If DADS notifies the CMA of the denial of the CLASS Program service and of the enrollment IPC modified in accordance with subsection (e) of this section, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

§45.217. CDS Option.

(a) During the initial face-to-face, in-home visit with the individual and LAR, as described in §45.212(a)(2) of this division (relating to Process for Enrollment of an Individual), and annually thereafter, the CMA must ensure that an individual's case manager informs the individual and LAR or person actively involved with the individual of:

(1) the CDS option in accordance with §41.109(a) of this title (relating to Enrollment in the CDS Option); and

(2) the specific CLASS Program services for which the CDS option is available as set forth in Appendix C of the CLASS Program waiver application approved by CMS, which is available at DADS website.

(b) If the individual or LAR chooses to participate in the CDS option, the case manager must:

(1) provide the name and contact information to the individual or LAR of each CDSA providing services in the catchment area in which the individual lives;

(2) document the individual's or LAR's choice of CDSA in accordance with DADS instructions;

(3) document each service to be provided through the CDS option on the IPC; and

(4) complete the required forms as described in §41.109(a) of this title.

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 3. REVIEWS

40 TAC §§45.221 - 45.225

The new sections 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.

§45.223. Renewal and Revision of an IPC.

(a) Beginning the effective date of an individual's IPC, as determined by §45.214(j) of this subchapter (relating to Development of Enrollment IPC) or §45.222(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must, at least every 90 calendar days, meet with the individual or LAR in the individual's home to review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service listed on the individual's IPC. The case manager must document the results of the review in the individual's record.

(b) An individual's case manager must:

(1) convene a service planning team that develops a proposed renewal IPC, new IPPs and a new habilitation plan at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed; and

(2) if the case manager becomes aware that the individual's need for a CLASS Program service changes, develop, within five business days after becoming aware, a proposed revised IPC and revised IPP(s) and, if necessary, a revised habilitation plan.

(c) The case manager must ensure that:

(1) a proposed renewal IPC and proposed revised IPC, developed in accordance with subsection (b)(1) or (2) of this section, meet the criteria described in §45.214(a)(1)(B) and (b) of this subchapter; and

(2) new or revised IPPs developed in accordance with subsection (b)(1) or (2) of this section are reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(d) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or a proposed revised IPC developed in accordance with subsection (b) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) submit the proposed IPC, IPPs, and habilitation plan to DADS for its review in accordance with the following:

(A) for a proposed renewal IPC developed in accordance with subsection (b)(1) of this section, the proposed renewal IPC, new IPPs, and new habilitation plan must be submitted to DADS at least 30 calendar days before the end of the IPC period; and

(B) for a proposed revised IPC developed in accordance with subsection (b)(2) of this section, the proposed revised IPC, any revised IPPs, and any revised habilitation plan must be submitted to DADS at least 30 calendar days before the effective date proposed by the service planning team; and

(3) send a copy of the proposed renewal or proposed revised IPC to the CDSA, if applicable.

(e) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in §45.214(b) of this subchapter or the requirements described in Subchapter F (relating to Adaptive Aids and Minor Home Modifications) the case manager must:

(1) in accordance with the *CLASS Provider Manual*, send the individual or LAR written notice of the denial of or proposal to reduce, as appropriate, the requested CLASS Program service, copying the DSA and CDSA; and

(2) in accordance with the time frames described in subsection (d)(2) of this section, submit to DADS for its review:

(A) the proposed renewal IPC or proposed revised IPC, which includes the type and amount of CLASS Program services in dispute and not in dispute, and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the IPPs; and

(C) the new habilitation plan or any revised habilitation plan; and

(3) send a copy of the proposed renewal or proposed revised IPC to the CDSA, if applicable.

(f) At DADS request, the CMA must submit additional documentation supporting the proposed IPC to DADS within 10 calendar days after DADS request.

(g) If DADS determines that the proposed renewal IPC or the proposed revised IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria), DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(h) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this subchapter, DADS notifies the individual's CMA, in writing, that the IPC is authorized.

(i) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC does not meet the requirements described in §45.214(b) of this subchapter or the requirements described in Subchapter F (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies or proposes reduction of the service(s), as appropriate;

(2) modifies and authorizes the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(j) If DADS notifies the CMA of the denial or proposed reduction of a CLASS Program service and of the IPC modified in accordance with subsection (i) of this section:

(1) for a denial of a CLASS Program service, the CMA must:

(A) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service); and

(B) coordinate the implementation of the modified IPC; or

(2) for a proposed reduction of a CLASS Program service:

(A) the CMA must send the individual or LAR written notice of the proposal to reduce the CLASS Program service in accordance with §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service); and

(B) the modified IPC is handled as follows:

(i) in accordance with §45.405(d) of this chapter, if the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the modified IPC may not be implemented; or

(ii) if the individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the CMA must coordinate the implementation of the modified IPC.

(k) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

§45.224. Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy.

(a) If a DSA provides licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, habilitation, respite, an adaptive aid, or dental treatment to an individual that is not included on the individual's IPC in accordance with §45.805(b) of this chapter (relating to DSA: Service Delivery), the DSA, must, within seven calendar days after providing the service, submit to the CMA:

(1) documentation describing the circumstances necessitating the provision of the new service or the increase in the amount of the existing service; and

(2) documentation by a registered nurse of the nurse's determination that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy as required by §45.805(b) of this chapter.

(b) Within seven calendar days after the CMA receives the documentation described in subsection (a) of this section, the CMA must:

(1) based on the documentation, develop a proposed revised IPC and revise the IPP; and

(2) submit the proposed revised IPC, revised IPP, and documentation to DADS.

(c) DADS authorizes the IPC only if, after reviewing the documentation described in subsection (a) of this section, it determines that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy. At DADS request, the CMA must submit additional documentation supporting the proposed revised IPC to DADS within 10 calendar days after DADS request.

(d) If DADS does not authorize the IPC, DADS does not pay the DSA for the service provided.

§45.225. Utilization Review of an IPC by DADS.

(a) At DADS discretion, DADS conducts a utilization review of an IPC to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b)of this subchapter (relating to Development of Enrollment IPC).

(b) If requested by DADS, a CLASS Program provider must submit documentation supporting the IPC to DADS within 10 calendar days after DADS request.

(c) If DADS determines that the IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If DADS determines that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in §45.214(b) of this subchapter or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies or proposes reduction of the service(s), as appropriate;

(2) modifies and authorizes the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(e) If DADS notifies the CMA of the denial or proposed reduction of the individual's CLASS Program services and of the IPC modified in accordance with subsection (d) of this section:

(1) for a denial of a CLASS Program service, the CMA must:

(A) send the individual or LAR written notice of the denial of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service); and

(B) coordinate the implementation of the modified IPC; or

(2) for a proposed reduction of a CLASS Program service:

(A) the CMA must send the individual or LAR written notice of the proposal to reduce the CLASS Program service in accordance with §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service); and

(B) the modified IPC is handled as follows:

(i) in accordance with §45.405(d) of this chapter, if the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the modified IPC may not be implemented; or

(ii) if the individual or LAR does not request a fair hearing before the effective date of the reduction of a CLASS Program service, as specified in the written notice, the CMA must coordinate the implementation of the modified IPC.

(f) The IPC period of an enrollment IPC or a renewal IPC modified by DADS in accordance with subsection (d) of this section does not change as a result of DADS modification.

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 C. PROGRAM AND CLAIM PAYMENT REQUIREMENTS

40 TAC §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, 45.343

The repeals 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 C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §45.301, §45.302

The new sections 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.

§45.302. Mandatory Participation Requirements of an Individual.

An individual, or an LAR on behalf of the individual, must comply with the following mandatory participation requirements:

(1) completing and submitting an application for Medicaid financial eligibility to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit as described in §45.212(a)(2) of this chapter (relating to Process for Enrollment of an Individual) or within another time frame permitted by §45.212(c) of this chapter;

(2) participating on the service planning team to:

(A) develop an enrollment IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC); and

(B) renew and revise the IPC and IPPs as described in §45.223 of this chapter (relating to Renewal and Revision of IPC);

(3) reviewing, agreeing to, signing, and dating an IPC and IPPs in accordance with §45.214 of this chapter, §45.215(b) of this chapter (relating to Development of IPPs), and §45.223 of this chapter;

(4) cooperating with the CMA and DSA in the delivery of CLASS Program services listed on the individual's IPC, including:

(A) working with the CMA and DSA in scheduling meetings;

(B) attending scheduled meetings with the case manager or service provider;

(C) being available to receive the CLASS Program services;

(D) notifying the CMA or DSA in advance if the individual or LAR is unable to attend a scheduled meeting or is unavailable to receive services in the individual's own or family home; and

(E) admitting CMA and DSA representatives to the individual's own home or family home for a scheduled meeting or to receive CLASS Program services;

(5) cooperating with the DSA's service providers to ensure progress toward achieving the goals and objectives described in the IPP for each CLASS Program service listed on the IPC;

(6) if found by HHSC to be financially eligible for CLASS Program services based on the special institutional income limit, paying the required co-payment in a timely manner;

(7) notifying the CMA and DSA if the individual receives notice from HHSC of a change in the status of the individual's financial eligibility for Medicaid;

(8) not engaging in criminal behavior in the presence of the case manager or service provider;

(9) not permitting a person present in the individual's own or family home to engage in criminal behavior in the presence of the service provider or case manager;

(10) not engaging in a pattern of harassment of the case manager or service provider that interferes with the ability to provide CLASS Program services or acting in a manner that is threatening to the health and safety of the case manager or service provider;

(11) not permitting a person present in the individual's own or family home to:

(A) engage in a pattern of harassment of the case manager or service provider that interferes with the ability to provide CLASS Program services; or

(B) act in a manner that is threatening to the health and safety of the case manager or service provider;

(12) in accordance with §45.409 of this chapter (relating to Termination of CLASS Program Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy), not exhibiting behavior or permitting a person present in the individual's residence to exhibit behavior that places the health and safety of the case manager or service provider in immediate jeopardy;

(13) not initiating or participating in fraudulent health care practices;

(14) not engaging in behavior that endangers the individual's health or safety; and

(15) not permitting a person present in the individual's own home or family home to engage in behavior that endangers the individual's health or safety.

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. FISCAL MONITORING

40 TAC §45.401, §45.403

The repeals 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. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

40 TAC §§45.401 - 45.410

The new sections 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.

§45.401. Coordination of Transfers.

(a) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CMA or DSA:

(1) document in the individual's record the date the transfer request was received; and

(2) make transfer arrangements, including completing appropriate documentation, in accordance with the *CLASS Provider Manual* with:

(A) the individual or LAR; and

(B) the receiving CMA or DSA, as appropriate.

(b) The CMA must establish an effective date for the individual's transfer that:

(1) is at least 14 calendar days after the date of the notice of intent to transfer described in subsection (a) of this section; and

(2) is agreed to by the CMA and individual or LAR, and, as appropriate, the receiving CMA or receiving DSA.

(c) The receiving CMA or DSA, as applicable, must timely provide documentation, as described in the *CLASS Provider Manual*, to the CMA to allow the CMA to complete forms in accordance with the *CLASS Provider Manual.*

(d) The current CMA must submit the following to DADS before the effective date of the transfer:

(1) the individual's current IPC; and

(2) forms completed in accordance with the *CLASS Provider Manual.*

(e) The IPC period of an enrollment IPC or renewal IPC does not change upon an individual's transfer to another CMA or DSA under this section.

(f) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CDSA, follow the guidelines described in §41.403 of this title (relating to Transfer Process).

§45.402. Denial of a Request for Enrollment into the CLASS Program.

(a) DADS denies an individual's request for enrollment into the CLASS Program if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria); or

(2) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If DADS denies an individual's request for enrollment, DADS sends written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing). DADS sends a copy of the written notice to the individual's DSA, CMA, and if selected, CDSA.

§45.403. Denial of a CLASS Program Service.

(a) DADS denies a CLASS Program service on an individual's IPC, based on a review described in §45.216 of this chapter (relating to DADS Review of an Enrollment IPC), §45.223 of this chapter (relating to Renewal and Revision of an IPC), or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the IPC does not meet the requirements described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies a CLASS Program service on the individual's IPC. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of DADS written notice of denial of a CLASS Program service, the CMA must:

(1) in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and, if selected, CDSA;

(2) include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing); and

(3) coordinate the implementation of the modified IPC described in subsection (b) of this section.

§45.404. Suspension of CLASS Program Services With Advance Notice.

(a) DADS suspends an individual's CLASS Program services if the individual:

(1) is under a temporary admission to one of the following facilities:

(A) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services; or

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(2) leaves the state for 180 consecutive calendar days or less.

(b) The period of suspension is the length of the admission to the facility or the time spent in another state.

(c) During a temporary admission to one of the facilities listed in subsection (a)(1) of this section or during an extension of the individual's suspension granted in accordance with subsection (d) of this section, an individual is not considered to be residing in the facility.

(d) DADS may extend an individual's suspension for 30 calendar days if the individual demonstrates that:

(1) the individual will likely be released from a facility listed in subsection (a)(1) of this section within 30 calendar days after:

(A) the temporary admission expires; or

(B) the end of a 30 calendar-day extension previously granted by DADS; or

(2) the individual will likely return to Texas and be available to receive CLASS Program services within 30 calendar days after:

(A) the end of the 180 calendar-day time period described in subsection (a)(2) of this section; or

(B) the end of a 30 calendar-day extension previously granted by DADS.

(e) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS suspend CLASS Program services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(f) DADS notifies the individual's CMA, in writing, of whether it authorizes a proposed suspension of CLASS program services.

(g) Upon receipt of a written notice from DADS authorizing the proposed suspension of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to suspend the services, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.405. Reduction of a CLASS Program Service.

(a) DADS reduces a CLASS Program service on an individual's IPC, based on a review described in §45.223 of this chapter (relating to Renewal and Revision of an IPC) or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the IPC does not meet the requirements described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) DADS notifies the individual's CMA, in writing, if it proposes to reduce a CLASS Program service. DADS sends a copy of the modified IPC to the CMA.

(c) Upon receipt of a written notice from DADS proposing to reduce a CLASS Program service, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to reduce the service, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If the individual or LAR requests a fair hearing before the effective date of the reduction of a CLASS Program Service, as specified in the written notice, the modified IPC described in subsection (b) of this section may not be implemented and the DSA must provide the service to the individual in the amount authorized in the prior IPC while the appeal is pending.

§45.406. Termination of CLASS Program Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety.

(a) DADS terminates an individual's CLASS Program services if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria);

(2) the individual is admitted for more than 180 consecutive calendar days to one of the facilities listed in §45.404(a)(1) of this division (relating to Suspension of CLASS Program Services With Advance Notice) and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division;

(3) the individual leaves the state for more than 180 consecutive calendar days and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division; or

(4) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(c) If the reason for the requested termination of services is subsection (a)(4) of this section, the CMA must include in the written documentation the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(d) Except as provided in subsection (f) of this section, DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS program services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to terminate CLASS Program Services, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(f) If the reason for the proposed termination of CLASS Program services is based on §45.201(a)(5) of this chapter and DADS authorizes the proposed termination, DADS sends written notice to the individual or LAR of the proposal to terminate CLASS Program services and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing). DADS sends a copy of the written notice to the individual's DSA, CMA, and, if selected, CDSA.

(g) If the individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services, as specified in the written notice, the DSA must provide services to the individual in the amounts authorized in the IPC while the appeal is pending.

§45.407. Termination of CLASS Program Services With Advance Notice Because of Non-compliance With Mandatory Participation Requirements.

(a) DADS may terminate an individual's CLASS Program services if the individual refuses to comply with a mandatory participation requirement described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual).

(b) If a CMA becomes aware that an individual has not complied with a mandatory participation requirement described in §45.302 of this chapter, the CMA must immediately attempt to resolve the situation, including facilitating at least one face-to-face meeting between:

(1) the individual or LAR;

(2) a representative from the CMA; and

(3) a representative from the DSA.

(c) If, after making attempts to resolve the situation as required by subsection (b) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days of the CMA's determination that the situation cannot be resolved and be supported by written documentation. The written documentation must include a description of:

(1) the situation that resulted in the request to terminate CLASS Program services; and

(2) the attempts by the CMA and DSA to resolve the situation, including face-to-face meetings with the individual or LAR.

(d) DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS program services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to terminate CLASS Program services, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(f) If the individual or LAR requests a fair hearing before the effective date of the termination of CLASS Program services, as specified in the written notice, the DSA must provide the services to the individual in the amounts authorized in the IPC while the appeal is pending.

§45.408. Termination of CLASS Program Services Without Advance Notice.

(a) DADS terminates an individual's CLASS Program services if any of the following situations exists:

(1) the CMA or DSA has factual information confirming the death of the individual;

(2) the CMA or DSA receives a clear written statement signed by the individual that the individual no longer wishes CLASS Program services;

(3) the individual's whereabouts are unknown and the post office returns mail directed to him or her by the CMA or DSA, indicating no forwarding address; or

(4) the CMA or DSA establishes that the individual has been accepted for Medicaid services by another state.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days after the CMA becomes aware of the situation and be supported by written documentation.

(c) DADS notifies the individual's CMA, in writing, of whether it authorizes the termination of CLASS program services.

(d) Upon receipt of a written notice from DADS authorizing the termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the termination, copying the individual's DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.409. Termination of CLASS Program Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy.

(a) DADS may terminate an individual's CLASS Program services if an individual or a person in the individual's residence exhibits behavior that places the health and safety of the CMA's case manager or a DSA's service provider in immediate jeopardy.

(b) If a CMA or DSA becomes aware that a situation described in subsection (a) of this section exists, the CMA or DSA must:

(1) immediately file a report with the appropriate law enforcement agency and, if appropriate, make an immediate referral to DFPS; and

(2) notify the CMA or DSA, as appropriate, and DADS by telephone of the situation no later than the business day after the day the CMA or DSA becomes aware of the situation.

(c) The CMA must, working with the DSA, attempt to resolve the situation.

(d) If, after making attempts to resolve the situation as required by subsection (c) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days after DADS was notified of the situation by the CMA or DSA and be supported by written documentation.

(e) The CMA must include in the written documentation required by subsection (d) of this section:

(1) a description of the situation that resulted in the request to terminate the individual's CLASS Program services;

(2) a detailed description of the attempts by the CMA to resolve the situation; and

(3) if available, a copy of any report issued by a law enforcement agency or DFPS regarding the situation.

(f) DADS notifies the individual's CMA and DSA, in writing, of whether it authorizes the termination of CLASS Program services.

(g) Upon receipt of written notice from DADS authorizing the termination of CLASS Program services, the CMA must, no later than the date of the termination of services, send written notice to the individual or LAR of such termination, copying the DSA and, if selected, CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.410. Requirement to Submit Fair Hearing Request Summary to DADS.

(a) When DADS receives a request for a fair hearing from an individual or LAR, DADS sends a copy of the request to the individual's CMA.

(b) The CMA must, within one business day after receipt of the request of the fair hearing from DADS, submit a completed Fair Hearing Request Summary, as described in the *CLASS Provider Manual*, 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.

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SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS
DIVISION 1. ADAPTIVE AIDS

40 TAC §§45.601 - 45.609

The new sections 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.

§45.602. Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.

(a) The maximum amount DADS authorizes as payment to a DSA for all adaptive aids and dental treatment combined is $10,000 per IPC period for an individual, except as provided in subsection (b) of this section.

(b) To request authorization for repair and maintenance of an adaptive aid up to $300 per IPC period, a DSA is not required to follow the process described in §45.603 of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than $500) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (Renewal and Revision of an IPC).

(c) A DSA must follow the process for requesting authorization to purchase an adaptive aid as described in §45.603 of this division if:

(1) requesting authorization for repair and maintenance of an adaptive aid in an amount that exceeds the $300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of an adaptive aid that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as an adaptive aid listed in the *CLASS Provider Manual.*

§45.603. Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than $500.

(a) To purchase an adaptive aid costing less than $500 for an individual, a CMA must:

(1) ensure that the individual's service planning team completes the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual,* evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary;

(2) within 14 calendar days after completing the requirement in paragraph (1) of this subsection, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the recommended adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2)(A) of this subsection, as applicable; and

(C) the individual's IPP as described in paragraph (2)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

§45.604. Requirements For Authorization to Purchase an Adaptive Aid Costing $500 or More.

(a) To purchase an adaptive aid costing $500 or more for an individual, a CMA must:

(1) ensure that the individual's service planning team includes the cost of the specifications for the adaptive aid, as described in §45.605 of this division (relating to Requirements for Specifications for an Adaptive Aid), in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (1)(B) of this subsection.

(b) The cost of the specifications included on an IPC and IPP as required by subsection (a)(1) of this section may not exceed an amount equal to three units of service of behavioral support, occupational therapy, physical therapy, or speech therapy, as applicable.

(c) DADS reviews the documentation described in subsection (a)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(e) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the adaptive aid in accordance with §45.605 of this division; and

(2) within 60 calendar days after obtaining the specifications:

(A) obtain bids from vendors in accordance with §45.606 of this division (relating to Requirements for Bids of an Adaptive Aid); and

(B) select a vendor from which to purchase the adaptive aid.

(f) A CMA must, within 14 calendar days after completing the requirements in subsection (e)(2) of this section, ensure that the individual's service planning team completes the Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary.

(g) A CMA must:

(1) within 14 calendar days after completing the requirement in subsection (f) of this section, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the cost of the adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form as required by subsection (f) of this section;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable;

(C) the individual's IPP as described in paragraph (1)(B) of this subsection; and

(D) documentation regarding bids as required by §45.606 of this division.

(h) DADS reviews the documentation described in subsection (g)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter or §45.223 of this chapter.

(i) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

§45.605. Requirements for Specifications for an Adaptive Aid.

(a) If DADS authorizes payment for specifications for an adaptive aid costing $500 or more in accordance with §45.604(c) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing $500 or More), a DSA must:

(1) obtain the specifications from a licensed professional required by DADS for that adaptive aid as described in the *CLASS Provider Manual;* and

(2) ensure that the specifications:

(A) include a complete description of the adaptive aid; and

(B) are approved, in writing, by the individual or LAR and the DSA by completing the Specifications for Adaptive Aids or Minor Home Modifications form as described in the *CLASS Provider Manual*.

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

(c) The DSA must provide a copy of the specifications to the CMA.

§45.606. Requirements for Bids of an Adaptive Aid.

(a) As required by §45.604(e)(2)(A) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing $500 or More), for a recommended adaptive aid costing $500 or more, a DSA must obtain comparable bids for the requested adaptive aid from three vendors. Comparable bids describe the adaptive aid and any associated items or modifications identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form required by §45.604(f) of this division.

(b) A bid obtained in accordance with subsection (a) of this section must include:

(1) the total cost of the requested adaptive aid, which may be from a catalog, website, or brochure price list;

(2) the amount of any additional expenses related to the delivery of the adaptive aid, including shipping and handling, taxes, installation, and other labor charges;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(5) for an adaptive aid other than interpreter service and specialized training for augmentative communication programs, a complete description of the adaptive aid and any associated items or modifications as identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, which may include pictures or other descriptive information from a catalog, website, or brochure; and

(6) for interpreter service and specialized training for augmentative communication programs, the number of hours of the service or training to be provided in-person and the hourly rate of the service.

(c) A DSA may obtain only one bid or two comparable bids for an adaptive aid if the DSA has written justification for obtaining less than three bids because the adaptive aid is available from a limited number of vendors.

(d) If a DSA requests to purchase an adaptive aid that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. The following are examples of justifications that support payment of a higher bid:

(1) the higher bid is based on the inclusion of a longer warranty for the adaptive aid; and

(2) the higher bid is from a vendor that is more accessible to the individual than another vendor.

(e) If the requested adaptive aid is a vehicle modification, a DSA must obtain proof that the individual or individual's family member owns the vehicle for which the vehicle modification is requested.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§45.609. Requirements of DSA Following Provision of Adaptive Aid.

(a) Within 10 business days after an individual has received an adaptive aid, a DSA must ensure that:

(1) the adaptive aid meets the specifications required by §45.604(e)(1) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing $500 or More); and

(2) a staff person involved in purchasing the adaptive aid for the individual:

(A) contacts the individual to determine whether the adaptive aid meets the needs of the individual; and

(B) documents the results of that visit on the Documentation of Completion of Purchase form as described in the *CLASS Provider Manual.*

(b) If the DSA determines that the adaptive aid does not meet the specifications required by §45.604(e)(1) of this division, the DSA must work with the vendor to ensure that the adaptive aid meets the specifications within 30 calendar days after the DSA's determination.

(c) If the staff person or individual or LAR determines that the adaptive aid does not adequately meet the individual's needs because the individual needs training or other assistance, or the adaptive aid requires repair or adjustment, the DSA must ensure that, within 14 business days after the determination, a person who is qualified to perform such training, assistance, repair, or adjustment visits the individual in person and performs the necessary functions.

(d) If the individual or LAR has concerns about the adaptive aid that are not addressed by the DSA's compliance with subsections (b) and (c) of this section, the DSA must process the individual's or LAR's concerns as a complaint in accordance with §45.808 of this chapter (relating to DSA: Complaint Process).

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
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DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§45.611 - 45.619

The new sections 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.

§45.613. Requirements for Authorization to Purchase a Minor Home Modification.

(a) To purchase a minor home modification for an individual a CMA must:

(1) ensure that the individual's service planning team includes the cost of the specifications for the requested minor home modification, as described in §45.614 of this division (relating to Requirements for Specifications for a Minor Home Modification), not to exceed $200, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as described in paragraph (1)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (1)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS' Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(d) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the requested minor home modification in accordance with §45.614 of this division;

(2) within 60 calendar days after obtaining the specifications:

(A) if the minor home modification costs more than $1000, obtain bids from vendors in accordance with §45.615 of this division (relating to Bid Requirements for a Minor Home Modification); and

(B) select a vendor to complete construction of the minor home modification; and

(3) before construction of the minor home modification:

(A) obtain written approval for construction of the modification from the owner of the property in question, unless such approval is granted in an applicable lease agreement; and

(B) ensure that the selected vendor obtains any required building permits.

(e) A CMA must, within 14 calendar days after completing the requirements in subsection (d)(2) of this section, ensure that the individual's service planning team completes the Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the minor home modification recommended by the licensed professional is necessary.

(f) A CMA must:

(1) within 14 calendar days after completing the requirement in subsection (e) of this section, ensure that the individual's service planning team includes the cost of the minor home modification

and the cost of the inspection of the minor home modification, not to exceed $150, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form required by subsection (e) of this section;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable;

(C) the individual's IPP described paragraph (1)(B) of this subsection; and

(D) documentation regarding bids as required by §45.615 of this division.

(g) DADS reviews the documentation described in subsection (f)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter or §45.223 of this chapter.

(h) DADS notifies a DSA, in the electronic billing system, of whether the proposed IPC is authorized. DADS notifies a CMA, in writing, of whether the proposed IPC is authorized.

(i) The DSA must direct the vendor to begin construction of the minor home modification within seven calendar days after one of the following, whichever is later:

(1) the date DADS authorizes the proposed IPC; or

(2) the effective date of the IPC as determined by the service planning team.

(j) A DSA must, within seven business days after it receives information that the minor home modification is completed, conduct an in-person inspection of the minor home modification in accordance with §45.616 of this division (relating to Inspection of a Minor Home Modification).

§45.614. Requirements for Specifications for a Minor Home Modification.

(a) If DADS authorizes payment for specifications for a minor home modification in accordance with §45.613(c) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), a DSA must:

(1) obtain the specifications from a person who has experience in constructing home modifications; and

(2) ensure that the specifications:

(A) include a complete description of the minor home modification and any associated installations identified in the specifications;

(B) include a drawing or picture of both the existing room, structure, or other area and the proposed modification made to scale;

(C) comply with the Texas Accessibility Standards promulgated by the Texas Department of Licensing and Regulation unless:

(i) the DSA determines that it is not structurally feasible to do so and the DSA documents, in writing, the basis for its determination; or

(ii) the individual or LAR requests, in writing, that the specifications not be in compliance with the Texas Accessibility Standards; and

(D) are approved, in writing, by each member of the service planning team by completing the Specifications for Adaptive Aids or Minor Home Modifications form as described in the *CLASS Provider Manual.*

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

§45.617. Time Frames for Completion of Minor Home Modification.

(a) A DSA must ensure that a minor home modification is completed within 60 calendar days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the cost of the minor home modification and inspection as described in §45.613(f) of this division (relating to Requirements For Authorization to Purchase a Minor Home Modification); or

(2) the effective date of the IPC as determined by the service planning team.

(b) If the DSA determines that the minor home modification will not be completed within the time frame required by subsection (a) of this section, the DSA must notify the individual or LAR, and the case manager, in writing, of a new proposed date of completion. The proposed date may not exceed 30 calendar days after the date required by subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.701 - 45.707

The new sections 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.

§45.701. Compliance with Laws, Rules, Regulations, and Requirement for E-mail Subscription.

(a) A CMA must comply with applicable state and federal laws, rules, and regulations including:

(1) this chapter;

(2) Chapter 49 of this title (relating to Contracting for Community Care Services); and

(3) 1 Texas Administrative Code (TAC), §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(b) A CMA is not required to be a HCSSA.

(c) A CMA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at the website address listed in the *CLASS Provider Manual.*

§45.702. Protection of Individual, Initial and Annual Explanations, and Offering Access to Other Services if Termination Presents a Threat to Health and Safety.

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with CMA staff persons;

(3) acts of financial impropriety;

(4) abuse, neglect, and exploitation; and

(5) deliberate damage of personal possessions.

(b) A case manager must explain the following to the individual and LAR or person actively involved with the individual, orally and in writing, upon notification by DADS that an individual selected the CMA as a program provider as required by §45.212(a)(2)(B), (D), (E), and (F) of this chapter (relating to Process for Enrollment of an Individual) and annually thereafter:

(1) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(2) the right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing);

(3) that the individual and LAR or person actively involved with the individual may report an allegation of abuse, neglect, or exploitation or make a complaint by calling DADS toll-free telephone number (1-800-458-9858); and

(4) the process by which the individual and LAR or person actively involved with the individual may file a complaint regarding case management as required by §45.707(c)(1) of this chapter (relating to CMA: Quality Management and Complaint Process).

(c) After an individual is enrolled in the CLASS Program, a CMA must, at least annually:

(1) provide an oral explanation to the individual and LAR or person actively involved with the individual that the individual may transfer to a different CMA or DSA;

(2) give the individual and LAR or person actively involved with the individual a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(3) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual;* and

(4) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form.

(d) If the termination of an individual's CLASS Program services in accordance with Subchapter D of this chapter (relating to Transfer, Denial, Suspension, Reduction, and Termination of Services) presents a threat to the individual's health and safety, the CMA must ensure that the case manager offers the individual access to:

(1) alternative long-term services and supports in the community; or

(2) institutional services.

§45.704. Training of CMA Staff Persons.

A CMA must ensure that a CMA staff person:

(1) completes DADS computer-based CLASS Program Basic Training available at DADS website within 60 calendar days after job duties are assumed; and

(2) completes, annually thereafter, the CLASS Individual Rights and Safeguards portion of such training.

§45.705. CMA Service Delivery.

(a) A CMA must ensure that:

(1) a full-time case manager is assigned to provide case management to no more than 50 individuals at one time; and

(2) a part-time case manager is assigned to provide case management to no more than 25 individuals at one time.

(b) In determining the number of individuals to which a case manager will be assigned, the CMA must take into consideration the intensity of an individual's needs, the frequency and duration of contacts the case manager will need to make with the individual, and the amount of travel time involved in making such contacts.

(c) A CMA must have:

(1) an adequate number of case managers available to ensure the provision of case management to an individual at all times; and

(2) a written process that ensures that case managers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide case management.

(d) A CMA must ensure that a case manager participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual.*

(e) A CMA must ensure that case management is provided to an individual in accordance with the individual's IPC.

(f) A CMA must submit an IPC to DADS within the time periods required by §45.214 of this chapter (relating to Development of Enrollment IPC) and §45.223(d)(2) of this chapter (relating to Renewal and Revision of an IPC) to ensure that a DSA receives reimbursement for the provision of CLASS Program services.

(g) A CMA must follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual.*

§45.707. CMA: Quality Management and Complaint Process.

(a) A CMA must, at least annually, conduct a survey of all individuals, LARs, and persons actively involved with the individual to determine their satisfaction with the provision of case management.

(b) A CMA must develop a written quality assurance process to evaluate and improve the quality of case management provided by the CMA based, at least in part, on the results of the survey required by subsection (a) of this section.

(c) A CMA must:

(1) have a written process by which complaints about the provision of case management from the individual and LAR or person actively involved with the individual are submitted to the CMA;

(2) allow complaints to be submitted either orally or in writing;

(3) obtain and maintain documentation of receipt of the complaint process by the individual or LAR;

(4) have written evidence of the date a written complaint was received;

(5) document receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(6) investigate each complaint and respond, in writing, to the complainant regarding the results of the investigation in a timely manner; and

(7) maintain a written log of complaints filed by individuals and LARs or persons actively involved with the individual that contains the following information:

(A) the date the CMA received the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the CMA in response to the complaint.

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 H. ADDITIONAL DSA REQUIREMENTS

40 TAC §§45.801 - 45.808

The new sections 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.

§45.801. Compliance with Laws, Rules, Regulations, and Requirement for E-mail Subscription.

(a) A DSA must comply with applicable state and federal laws, rules, and regulations including:

(1) this chapter;

(2) Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(3) Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services);

(4) Chapter 49 of this title (relating to Contracting for Community Care Services); and

(5) 1 TAC §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(b) A DSA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at the website address listed in the *CLASS Provider Manual.*

§45.803. Qualifications of DSA Staff Persons.

(a) A DSA must ensure that a staff person meets the requirements of this section.

(b) A service provider for a direct service must meet the qualifications in this subsection.

(1) A service provider for a direct service:

(A) must be at least 18 years of age; and

(B) except as provided by paragraph (2) of this subsection, may not be a relative of the individual to whom the service provider is providing the direct service.

(2) A service provider of habilitation, prevocational services, respite, or supported employment may be a relative of the individual unless prohibited by subsection (d)(17) of this section.

(c) A DSA must have a full-time or part-time program director who:

(1) manages and oversees the DSA's operations including the provision of CLASS Program services to individuals enrolled with the DSA and has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is at least 18 years of age;

(3) is an employee of the DSA; and

(4) is not a relative of an individual being served by the DSA.

(d) A DSA must ensure that CLASS Program services are provided by qualified service providers in accordance with this subsection.

(1) A qualified service provider of registered nursing and of specialized registered nursing must be a registered nurse.

(2) A qualified service provider of licensed vocational nursing and of specialized licensed vocational nursing must be a person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(3) A qualified service provider of occupational therapy must be an occupational therapist or an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454.

(4) A qualified service provider of physical therapy must be a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(5) A qualified service provider of speech therapy must be a speech-language pathologist or a licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401.

(6) A qualified service provider of auditory integration/auditory enhancement training must be an audiologist or a licensed assistant in audiology licensed in accordance with Texas Occupations Code, Chapter 401.

(7) A qualified service provider of dental treatment must be a person licensed to practice dentistry, dental surgery, or dental hygiene in accordance with Texas Occupations Code, Chapter 256.

(8) A qualified service provider of nutritional services must be a licensed dietician licensed in accordance with Texas Occupations Code, Chapter 701.

(9) A qualified service provider of massage therapy must be a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455.

(10) A qualified service provider of therapeutic horseback riding must be a person certified by the North American Riding for the Handicapped Association as a therapeutic riding instructor.

(11) A qualified service provider of hippotherapy must be:

(A) a person certified by the North American Riding for the Handicapped Association as a therapeutic riding instructor; and

(B) one of the following:

(i) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454;

(ii) an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(iii) a physical therapist licensed in accordance with Texas Occupations Code, Chapter 453; or

(iv) a physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(12) A qualified service provider of recreational therapy must be a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification.

(13) A qualified service provider of music therapy is a person who holds a credential as a board certified music therapist awarded by the Certification Board for Music Therapists.

(14) A qualified service provider of aquatic therapy must:

(A) be one of the following:

(i) a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455; or

(ii) a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; and

(B) hold a certificate of completion of the "Basic Water Rescue" course from the American Red Cross or be certified by the American Red Cross as a lifeguard.

(15) A qualified service provider of behavioral support must:

(A) be one of the following:

(i) a psychologist licensed in accordance with the Texas Occupations Code, Chapter 501;

(ii) a provisional license holder licensed in accordance with the Texas Occupations Code, Chapter 501;

(iii) a psychological associate licensed in accordance the Texas Occupations Code, Chapter 501;

(iv) a social worker licensed in accordance with the Texas Occupations Code, Chapter 505;

(v) a licensed professional counselor licensed in accordance with the Texas Occupations Code, Chapter 503; or

(vi) a behavior analyst certified by the Behavior Analyst Certification Board, Inc.; and

(B) have received training in behavioral support or have experience in providing behavioral support.

(16) A qualified service provider of prevocational services must have:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities.

(17) A qualified service provider of habilitation, prevocational services, respite, or supported employment may not be:

(A) the parent of the individual to whom the service provider is providing habilitation, respite, or supported employment if the individual is under 18 years of age; or

(B) the spouse of the individual to whom the service provider is providing habilitation, respite, or supported employment.

(18) A qualified service provider of transition assistance services must meet the requirements described in §62.21 of this title (relating to Staff Requirements).

(19) A qualified service provider of support family services or continued family services must meet the requirements described in §45.531(a) of this chapter (relating to Support Family Requirements).

(e) A DSA may not contract with or employ a service provider who is employed by or contracting with a CMA to provide case management to an individual served by the DSA.

(f) A DSA must ensure that a staff person who transports an individual in a vehicle has:

(1) a current Texas driver's license; and

(2) vehicle liability insurance in accordance with state law.

§45.804. Training of DSA Staff Persons.

(a) A DSA must ensure that a DSA staff person who has direct contact with an individual:

(1) completes DADS computer-based CLASS Program Basic Training available at DADS website within 60 calendar days after job duties are assumed; and

(2) completes, annually thereafter, the CLASS Individual Rights and Safeguards portion of such training.

(b) A DSA must ensure that, before providing services to an individual, a service provider of habilitation completes:

(1) two hours of orientation covering the following:

(A) an overview of related conditions; and

(B) an explanation of commonly performed tasks regarding habilitation;

(2) training in cardiopulmonary resuscitation and choking prevention that includes an in-person evaluation by a qualified instructor of the service provider's ability to perform these actions; and

(3) training in the habilitation activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible.

(c) The supervisor of a service provider of habilitation must, in accordance with the *CLASS Provider Manual,* evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

§45.805. DSA: Service Delivery.

(a) A DSA must ensure that:

(1) each CLASS Program service is provided to an individual in accordance with:

(A) the individual's IPC; and

(B) the individual's IPP for that service; and

(2) an adaptive aid and minor home modification also meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) A DSA must provide licensed vocational nursing, specialized licensed vocational nursing, registered nursing, specialized registered nursing, habilitation, respite, an adaptive aid, or dental treatment to an individual, even if not included on the individual's IPC, if a registered nurse determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §45.224(a) of this chapter (relating to Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual.*

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

§45.806. Respite and Dental Treatment.

(a) An individual may receive no more than a total of 30 calendar days of respite per IPC period.

(b) A DSA must ensure that:

(1) in-home respite is provided in the individual's residence or the residence of a relative or friend that is not one of the settings listed in paragraph (2) of this subsection;

(2) out-of-home respite is provided in one of the following:

(A) an adult foster care home licensed by DADS in accordance with Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care);

(B) a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an ICF/MR licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS;

(D) an approved outdoor camp accredited by the American Camping Association; or

(E) the residence of another person receiving a Medicaid waiver service; and

(3) the setting in which out-of-home respite is provided is:

(A) acceptable to the individual or LAR; and

(B) an accessible, safe, and comfortable environment for the individual and promotes the individual's health and welfare.

(c) If a DSA provides out-of-home respite in a residence described in subsection (b)(2)(E) of this section, the DSA must:

(1) obtain written approval from each person residing in the residence who is receiving a Medicaid waiver service, or LAR, for the provision of respite in the residence; and

(2) ensure that no more than four persons receiving a Medicaid waiver service are residing in the residence.

(d) The maximum amount DADS authorizes as payment to a DSA for all dental treatment and adaptive aids combined is $10,000 per IPC period for an individual.

(e) A DSA must follow the process for requesting authorization to purchase dental treatment as described in the *CLASS Provider Manual.*

§45.808. DSA: Complaint Process.

A DSA must:

(1) have a written process by which complaints about the provision of CLASS Program services from the individual and LAR or person actively involved with the individual are submitted to the DSA;

(2) allow complaints to be submitted either orally or in writing;

(3) inform the individual and LAR or person actively involved with the individual, orally and in writing, of the process by which they may file a complaint regarding CLASS Program services provided by the DSA:

(A) after receiving notice from DADS that the individual selects the DSA as a program provider as required by §45.212(g)(2) of this chapter; and

(B) at least annually thereafter;

(4) obtain and maintain documentation of receipt of the complaint process by the individual or LAR;

(5) have written evidence of the date a written complaint was received;

(6) document receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(7) investigate each complaint and respond, in writing, to the complainant regarding the results of the investigation in a timely manner; and

(8) maintain a written log of complaints filed by individuals and LARs or persons actively involved with the individual that contains the following information:

(A) the date the DSA received the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the DSA in response to the complaint.

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 I. FISCAL MONITORING

40 TAC §45.901, §45.902

The new sections 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.

§45.901. Administrative Errors.

A recoupment of 12 percent of the paid unit rate is the administrative error exception for services billed. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to, the items in paragraph (1) - (2) of this section:

(1) Administrative errors on documentation of services delivered form or the facsimile:

(A) The program provider leaves the month and year of service blank. DADS applies the error to the total number of units documented on the time sheet.

(B) The timekeeper fails to enter a date of signature to certify the total number of hours the habilitation service provider, nurse, or therapist worked. DADS applies the error to the total number of units documented on the time sheet.

(C) The timekeeper corrects the date of signature but fails to initial the correction. DADS applies the error to the number of units reimbursed after the earliest signature date.

(D) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. DADS applies the error to the total number of units documented on the time sheet.

(E) The timekeeper enters a date of signature that is before the date of the last day services are delivered. DADS applies the error to the total number of units reimbursed after the signature date.

(F) The timekeeper fails to sign the time sheet. DADS applies the error to the total number of units documented on the time sheet.

(G) The timekeeper uses a signature stamp, but fails to initial the stamped signature. DADS applies the error to the total number of units documented on the time sheet.

(H) The habilitation service provider, nurse, therapist, other professional, or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the time sheet. DADS applies the error to the total number of units documented on the time sheet. If the liquid paper/correction fluid is used only on a daily entry in the record of time, DADS applies the error only to the total number of units reimbursed for that day.

(I) The habilitation service provider, nurse, therapist, other professional, or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. DADS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(J) The habilitation service provider fails to initial an increase in the daily time or the monthly total of hours for the pay period. DADS applies the error to the number of units reimbursed in excess of the original entry.

(K) The habilitation service provider, nurse, therapist, other professional, or other agency representative fails to sign the documentation of services delivered form or facsimile unless the service delivered is documented through an electronic visit verification system. DADS applies the error to the total number of units documented on the time sheet.

(L) DADS reimburses the program provider for nursing, therapies, psychological, habilitation, out-of-home respite, in-home respite, adaptive aids/vehicle modifications or home modifications but a valid authorization IPC form, pages 1-2 and all pertinent attachments signed by the case manager, are missing for the period reimbursed to the agency. DADS applies the error to the total number of units of nursing, psychological therapies, habilitation, out-of-home respite, in-home respite, and adaptive aids/vehicular modifications claimed and not covered by a valid IPC.

(M) DADS reimburses the program provider for nursing services, and there is no other documentation available that the nurse provided billable nursing services during the visit.

(2) The following items are administrative errors resulting in recoupment of the entire requisition fee.

(A) There is no CLASS Program documentation of completion of services delivered, but there is a receipt for the purchase of adaptive aids/vehicle modifications or the completion of the minor home modification.

(B) Bids were required for the purchase of an adaptive aid/vehicle modification or the completion of a minor home modification and bids were not solicited.

(C) DADS reimburses the program provider for the purchase of medical supplies, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the provider has been reimbursed or the price list/price quotes were obtained more than 12 months before the purchase.

(D) DADS reimburses the program provider for the purchase of adaptive aids, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the program provider has been reimbursed or there is no documentation available that the supplier selected on an annual basis to deliver the adaptive aids had the lowest prices for the main type of adaptive aids the agency has purchased.

(3) Administrative errors for the CMA include, but are not limited to, the following:

(A) The CMA does not provide a completed IPC and an updated IPP within seven days from an interdisciplinary team meeting which results in the DSA providing services that at a later date are rejected because the CMA failed to submit the IPC for DADS authorization.

(B) The DSA has the case information form on record which indicates that the DSA had requested corrected service updates be made to the individual's IPC prior to providing the service and the CMA provided authorization for that service on the case information form but failed to submit a corrected IPC for DADS authorization.

§45.902. Financial Errors.

A reduction of 100 percent of the paid unit rate is the financial error exception. This exception is applied to the unit(s) of service on the documentation reviewed in the CLASS Program. This exception is not extrapolated. Financial errors include, but are not limited to, the following:

(1) DADS reimburses the program provider for services, but the CLASS Program documentation of services delivered form, or facsimile, is missing for the period for which services are reimbursed. DADS applies the error to the total number of units documented on the time sheet.

(2) The habilitation service provider, nurse, therapist, or other professional leaves the entire record of time section blank. DADS applies the error to the total number of units documented on the time sheet.

(3) DADS reimburses the program provider for hours that exceed the authorization given by DADS. DADS applies the error to the total number of units reimbursed in excess of the units authorized by DADS, unless purchased following emergency procedures.

(A) For nursing services, the maximum that may be reimbursed is the number of hours listed under "Nursing Services" in the IPC form.

(B) For habilitation services, the maximum that may be reimbursed for a month is the monthly amount authorized on the CLASS IPC/IPP plus any hours not used due to individual stay while in a hospital or in a rehabilitation hospital.

(4) DADS reimburses the program provider for any waiver service that is not identified on the individual's IPC form and attachments, unless the service was provided as a result of an emergency and is supported by back-up documentation within seven business days from the date the emergency was determined.

(5) DADS reimburses the program provider for hours that exceed the total number of hours recorded on the documentation of services delivered form or facsimile or generated by an electronic visit verification system. DADS applies the error to the total number of units reimbursed in excess of the units recorded on the time sheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.

(6) DADS reimburses the program provider for nursing, physical therapy, occupational therapy, or speech pathology services, but a valid order by a licensed health care professional legally authorized to issue such an order is missing. DADS applies the error to the total number of units claimed and not covered by a valid order.

(7) DADS reimburses the program provider for a claim for service, other than the initial administrative fee, delivered prior to the eligibility effective date on the IPC form. DADS applies the error to the total number of units reimbursed for such services that were delivered before the effective date on the form.

(8) DADS reimburses the program provider for any hours that consisted of non-billable time and activities as identified in the *CLASS Provider Manual.*

(9) DADS reimburses the program provider for more than four hours of nursing used to decide whether to delegate to the habilitation service provider. DADS applies the error to the total number of units reimbursed for such services.

(10) DADS reimburses the program provider for more than 10 hours during the individual's IPC year for nursing services being performed by a nurse to prevent service breaks caused by the habilitation service provider not being available to provide delegated nursing tasks. DADS applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.

(11) DADS reimburses the program provider for an amount in excess of the amount documented on the invoice/receipt for adap-

tive aids/vehicle modifications or minor home modifications. DADS applies the error to the total number of dollars reimbursed in excess of the amount on the invoice/receipt, plus the appropriate dollar amount of the requisition fee, if applicable.

(12) If there is no invoice/receipt for the purchase of adaptive aids/vehicle modifications or for the completion of minor home modifications for which the provider has been reimbursed, DADS applies the error to the total dollar amount reimbursed for adaptive aids/vehicle modifications or minor home modifications in question, including the requisition fee.

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 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER C. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM

40 TAC §§48.2101 - 48.2106, 48.2109, 48.2111, 48.2113, 48.2115, 48.2117, 48.2119, 48.2121

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter C, Community Living Assistance and Support Services (CLASS) Program, consisting of §§48.2101 - 48.2106, 48.2109, 48.2111, 48.2113, 48.2115, 48.2117, 48.2119, and 48.2121 in Chapter 48, Community Care for Aged and Disabled, without changes to the proposed text published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8090).

The repeal is adopted to rewrite and reorganize CLASS Program rules in 40 TAC, Chapter 45, adopted elsewhere in this issue of the *Texas Register*, so that the rules are easier for CLASS Providers and the public to use and understand.

DADS received no comments regarding adoption of the repeal.

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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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §90.50, concerning emergency preparedness and response, in Subchapter C, Standards for Licensure; and new §90.74, concerning safety operations, and the repeal of existing §90.74, concerning safety operations, in Subchapter D, General Requirements for Facility Construction, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions. New §90.50 and §90.74 are adopted with changes to the proposed text published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8091). The repeal of §90.74 is adopted without changes.

The new sections and repeal are adopted in response to the experiences, challenges, and lessons learned during past hurricane seasons. The purpose of the adoption is to ensure the health, safety, and well-being of residents of intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) during and after a disaster, such as acts of nature, spills of chemical or hazardous materials, major equipment failure, and acts of terrorism.

New §90.50, regarding emergency preparedness and response, requires ICFs/MR to develop emergency preparedness and response plans that address the core functions of emergency management and to designate an emergency preparedness coordinator, a facility staff person who has the authority to manage the facility's response to an emergency situation in accordance with the plan.

The repeal of §90.74 deletes current provisions regarding safety operations, which are addressed in new §90.74.

New §90.74 adds rules regarding inspection, testing, and maintenance of fire alarm and sprinkler systems and provides requirements for smoking policies.

The agency has changed §90.50(f)(3)(B) to reflect direction given by the Centers for Medicare and Medicaid Services, in Survey and Certification Memo #10-26, that small facilities with a prompt or slow evacuation capability must evacuate residents during every fire drill, not just once each year on each work shift.

The agency has changed §90.50(f)(3)(C) to allow the use of a fire drill report form that contains, at a minimum, the information

in the DADS Fire Drill Report because some ICFs/MR use other forms and DADS is willing to accept a different form, as long as the necessary information is provided.

DADS received a written comment from CALEB, Inc. A summary of the comment and the response follows.

Comment: A commenter stated that facility smoking policies in §90.74(c)(2), requiring posted signs in small ICF/MR homes, institutionalize the home and affect the home's environment.

Response: The agency deleted the requirement in §90.74(c)(2) that a facility post its smoking policies to avoid creating an institutional environment, but maintained the requirement that a facility inform residents, staff, and visitors of the smoking policies.

SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.50

The new section 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; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 252.

§90.50. Emergency Preparedness and Response.

(a) Definitions. In this section:

(1) "emergency situation" means an impending or actual situation that:

(A) may interfere with normal activities of a facility or its residents;

(B) may cause:

(i) injury or death to a resident or staff member of the facility; or

(ii) damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage or interference; and

(D) does not include a situation that arises from the medical condition of a resident such as cardiac arrest, obstructed airway, cerebrovascular accident;

(2) "plan" means a facility's emergency preparedness and response plan; and

(3) "receiving facility" means a facility that has agreed to receive the residents of another facility who are evacuated due to an emergency situation.

(b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current written copy of the plan that is accessible to all staff at all times;

(3) evaluate the plan to determine if information in the plan needs to change:

(A) within 30 days after an emergency situation;

(B) due to remodeling or making an addition to the facility; and

(C) at least annually;

(4) revise the plan within 30 days after information in the plan changes; and

(5) maintain documentation of compliance with this section.

(c) Emergency Preparedness and Response Plan. A facility's plan must:

(1) include a risk assessment of potential internal and external emergency situations, including a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice conditions for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's resident population;

(3) include a description of the services and assistance needed by the residents in an emergency situation;

(4) include a section for each core function of emergency management that complies with subsection (d) of this section and is based on a facility's decision to either shelter-in-place or evacuate during an emergency situation; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan Requirements Regarding Eight Core Functions of Emergency Management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) identifies the emergency preparedness coordinator (EPC), who is the facility staff person with the authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) identifies the alternate EPC, who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity; and

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area in which the facility is located, as identified by the office of the local mayor or county judge.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur, including during off hours, weekends, and holidays; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:

(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for residents' responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for potential places to which to evacuate, such as hotels, motels, and other facilities licensed under this chapter or certified to participate in the Medicaid ICF/MR Program;

(D) includes procedures for maintaining a current list of telephone numbers for the facility's staff, by residence or unit, that identifies the facility's EPC and administrative staff;

(E) identifies the location of the lists described in subparagraphs (B) - (D) of this paragraph, which must be a place where facility staff can obtain the information quickly;

(F) includes procedures to notify:

(i) facility staff about an emergency situation;

(ii) a receiving facility about an impending or actual evacuation of residents; and

(iii) residents, legally authorized representatives, and other persons about an impending or actual evacuation;

(G) provides a method for persons to obtain resident information during an emergency situation; and

(H) includes procedures for the facility to maintain communication with:

(i) facility staff involved in an emergency situation;

(ii) a receiving facility, if applicable; and

(iii) the driver of a vehicle transporting residents, medications, records, food, water, equipment, or supplies during an evacuation.

(4) Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(A) includes procedures for implementing a decision to shelter-in-place that include:

(i) having access to medications, records, food, water, equipment and supplies; and

(ii) sheltering facility staff involved in responding to an emergency situation, and their family members, if necessary;

(B) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to shelter-in-place has been made; and

(C) includes procedures for accommodating evacuated residents, if the facility serves as a receiving facility for a facility that has evacuated.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small one-story buildings where all exits are obvious;

(B) includes procedures for implementing a decision to evacuate residents to a receiving facility in an emergency situation, if applicable;

(C) identifies evacuation destinations and routes and includes a map that shows the destinations and routes;

(D) includes a current copy of the agreement with a receiving facility, if the evacuation destinations identified in accordance with subparagraph (C) of this paragraph include a receiving facility that is not owned by the same entity as the facility;

(E) includes procedures for:

(i) ensuring that facility staff accompany evacuating residents;

(ii) ensuring that residents and facility staff present in the building have been evacuated;

(iii) accounting for residents after they have been evacuated;

(iv) accounting for residents absent from the facility at the time of the evacuation;

(v) releasing resident information in an emergency situation to promote continuity of a resident's care;

(vi) contacting the local EMC to find out if it is safe to return to the geographical area; and

(vii) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility;

(G) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to evacuate is made; and

(H) includes procedures for notifying DADS regional office for the area in which the facility is located by telephone that residents have returned to the facility, within 48 hours of their return to the facility after an evacuation.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of facility-owned vehicles to evacuate all residents and for alternate transportation arrangements if the facility-owned vehicles are not available;

(B) includes procedures for safely transporting residents, facility staff involved in an evacuation and, if necessary, their family members, and the facility's and residents' pets during an evacuation; and

(C) includes procedures to safely transport and have timely access to oxygen, medications, records, food, water, equipment, and supplies needed during an evacuation.

(7) Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(A) identifies all of the facility's residents with special medical needs; and

(B) ensures that the needs of those residents are met during an emergency situation.

(8) Resource Management. A facility's plan must contain a section for resource management that:

(A) includes procedures for maintaining accurate and detailed checklists of medications, records, food, water, equipment and supplies needed during an emergency situation;

(B) identifies facility staff who are assigned to locate and ensure the transportation of the items on the list described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure that medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) inform a facility staff member of the staff member's responsibilities under the plan within five working days after assuming job duties;

(2) re-train a facility staff member at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced, annual drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire Safety Plan. A facility's fire safety plan must:

(1) for a large facility, include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 18 (for new healthcare occupancies) and Chapter 19 (for existing healthcare occupancies) concerning:

(A) use of alarms;

(B) transmission of alarm to fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation; and

(H) extinguishment of fire;

(2) for a small facility, include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 32 (for new residential board and care occupancies) and Chapter 33 (for existing residential board and care occupancies) concerning:

(A) use of alarms;

(B) staff response in the event of a fire;

(C) fire protection procedures for a resident;

(D) actions to take if the primary escape route is blocked; and

(E) specification of an assembly point after a resident evacuates from the facility; and

(3) include procedures for:

(A) rehearsing the fire safety plan at least once per quarter on each work shift;

(B) evacuating residents as follows:

(i) for a small facility that has a prompt or slow evacuation capability, during every fire drill; or

(ii) for a large facility or facility with an impractical evacuation capability, during at least one fire drill each year on each work shift;

(C) completing the form titled "DADS Fire Drill Report" or a form containing, at a minimum, the information on the DADS form; and

(D) providing residents and facility staff with experience in egressing through all exits and means of escape.

(g) Reporting Fires. A facility must report a fire at the facility to DADS as follows:

(1) by calling 1-800-458-9858 within 24 hours after the fire; and

(2) by submitting a completed DADS form titled "Fire Report for Long Term Care Facilities" within 15 days after the fire.

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 March 1, 2011.

TRD-201100830
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: March 21, 2011
Proposal publication date: September 3, 2010
For further information, please call: (512) 438-3734

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SUBCHAPTER D. GENERAL REQUIREMENTS FOR FACILITY CONSTRUCTION

40 TAC §90.74

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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The repeal affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 252.

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 March 1, 2011.

TRD-201100831
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: March 21, 2011
Proposal publication date: September 3, 2010
For further information, please call: (512) 438-3734

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40 TAC §90.74

The new section 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; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 252.

§90.74. Safety Operations.

(a) The facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in National Fire Protection Association (NFPA) 72 for a service provided under the contract.

(3) The facility must ensure that fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(4) The facility must ensure that fire alarm system components that require testing are tested in accordance with NFPA 72.

(5) The facility must ensure that fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(6) The facility must ensure that smoke dampers are inspected and tested in accordance with NFPA 101, 2000 Edition.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(b) The facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) The facility must ensure that sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(4) The facility must ensure that sprinkler system components that require testing are tested in accordance with the NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(5) The facility must ensure that sprinkler system components that require maintenance are maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(6) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(c) The facility must formulate, adopt, and enforce smoking policies.

(1) The facility's policies must comply with all applicable codes, regulations, and standards, including local ordinances.

(2) The facility must inform residents, staff, visitors, and other affected parties of the facility's smoking policies.

(3) The facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen is used or stored and in any other hazardous location. The facility must post a "No Smoking" sign in these areas.

(4) The facility must provide ashtrays of noncombustible material and safe design in all areas where smoking is permitted.

(5) The facility must provide a metal container with a self-closing cover device into which ashtrays can be emptied in all areas where smoking is permitted.

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 March 1, 2011.

TRD-201100832
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: March 21, 2011
Proposal publication date: September 3, 2010
For further information, please call: (512) 438-3734

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (Commission) proposes to review its rules in 13 TAC Chapter 2, concerning the general policies and procedures of the Commission pursuant to the requirements of the Government Code, §2001.039.

The rules in Chapter 2 were adopted pursuant to Government Code, §441.006(a)(1) and (2) that provides the Commission shall govern the Texas State Library and adopt rules to aid and encourage the development of and cooperation among all types of libraries; Government Code, §§441.0092(b)(3), 441.0092(b)(1), and 441.136 that require the Commission to adopt rules concerning various grants to libraries; Government Code, §656.048 that requires state agencies to adopt rules concerning the training and education of agency employees; Government Code, §2161.003 that requires state agencies to adopt rules concerning historically underutilized businesses; Government Code, §2171.1045 that requires agencies to adopt rules concerning vehicle fleet management; and Government Code, §2255.001 that requires state agencies to adopt rules concerning the relationship between an agency and any friends groups or similar organizations established to support the agency.

Written comments on the review of Chapter 2 may be directed to Vincent Houston, Director, Administrative Services, Box 12927, Austin, Texas 78711-2927 or by fax (512) 463-3560.

TRD-201100960
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: March 8, 2011

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The Texas State Library and Archives Commission (Commission) proposes to review its rules in 13 TAC Chapter 7, concerning the operation of regional historical resource depositories and the retention, microfilming, electronic storage of local government records, and electronic filing and recording of certain records by a participating county clerk pursuant to the requirements of the Government Code, §2001.039.

The rules were adopted pursuant to the Government Code, §441.006(a)(10) that requires the Commission to adopt policies to aid and encourage effective records management and preservation programs in local governments of the state; Government Code, §441.153(b) that requires the Commission to adopt rules for Regional Historical Resource Depositories; Government Code, §441.158(a) that requires the Commission to adopt local government records retention schedules by rule; Local Government Code, §204.004(a) that requires the Commission to adopt rules establishing standards and procedures for microfilming local government records; Local Government Code, §205.003(a) that requires the Commission to adopt rules establishing standards and procedures for electronic storage of local government record data; and Local Government Code, §195.002(a) that requires the Commission to adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically. The rules are necessary to carry out the statutory obligations of the Commission in the management of local government records.

Written comments on the review of Chapter 7 may be submitted to Nanette Pfiester, Program Planning and Research Specialist, Box 12927, Austin, Texas 78711; by fax to (512) 421-7201; or by email to nanette.pfiester@tsl.state.tx.us.

TRD-201100961
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: March 8, 2011

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.602(b)

Scientific Name	**Common Name(s)**
Acoelorrhaphe wrightii	Everglades palm
Adonidia merrilli (=Veitchia)	Manila palm, Christmas palm
Aiphanes caryotfolia	**Coyure palm, ruffle palm, spine palm**
Aiphanes spp.	Multiple crown palm, Ruffle palm
Areca catechu	Betel nut palm
Areca spp.	
Archontophoenix alexandrae	**Alexander palm, king palm**
Arenga pinnata	**Gomuti palm, sugar palm**
Bactris plumeriana	Coco macaco, Prickly pole
Bismarckia nobilis	Bismarck palm
Caryota mitis	Fishtail palm
Beccariophoenix madagascariensis	**Giant windowpane palm**
Butia capitata	**Pindo palm, Jelly palm**
Chamaedorea spp.	Chamaedorea palm
Cocos nucifera	Coconut palm
Coccothrinax miraguama	**Miraguama palm**
Corypha umbraculifera	**Talipot palm**
Dictyosperma album	Princess palm, Hurricane palm
Dypsis decaryi	Triangle palm
Dypsis lutescens (= Chrysalidocarpus)	Areca palm, Golden cane palm, Butterfly palm
Elaeis guineensis	African oil palm
Howea forsteriana	**Kentia palm, sentry palm**
Licuala grandis	Licuala palm, Ruffled fan palm
Livistona chinensis	Chinese fan palm

Phoenix canariensis	Canary Island date palm
Phoenix dactylifera	Date palm
Phoenix reclinata	Senegal date palm
Phoenix roebelenii	Pygmy date palm, Roebelenii palm
Pritchardia pacifica	Fiji fan palm
Pseudophoenix sargentii	Buccaneer palm
Pseudophoenix vinifera	Cacheo, Katié
Ptychosperma elegans	Solitaire palm, Alexander palm
Ptychosperma macarthurii	Macarthur palm
Rhapis excelsa	Lady palm, bamboo palm
Roystonea borinquena	**Puerto Rico** Royal palm
Roystonea regia	**Florida royal palm**
Schippia concolor	**Silver pimento palm**
Syagrus romanzoffiana	Queen palm
Syagrus schizophylla	Arikury palm
Thrinax radiata	**Florida thatch palm**
Veitchia spp.	**Manila palm**
Washingtonia filifera	Fan palm
Washingtonia robusta	Mexican fan palm
Washingtonia spp.	
Wodyetia *[~~Wodyetis~~] bifurcata*	Foxtail palm
Heliconia bihai	Macaw flower
Heliconia caribaea	Wild plantain, Balisier
Heliconia psittacorum	Parrot flower
Heliconia rostrata	Lobster claw heliconia
Heliconia spp.	
Musa ***acuminata*** *[~~acuminate~~]*	Edible banana, Plantain

Musa balbisiana	Wild banana
Musa coccinnea (= *Musa uranoscopus)*	Red flowering banana
Musa x ***paradisiaca*** *[~~paradisiacal~~] (= Musa sapientum)*	Edible banana, Plantain
Musa corniculata	Red banana
Musa spp	Banana, Plantain
Pandanus utilis	Screw pine
Strelitzia reginae	Bird of paradise, Crane flower
Ravenala madagascariensis	Traveler's tree
Etlingera elatior (= Nicolaia)	Red torch ginger
Alpinia purpurata	Red ginger, Jungle king/queen
Alpinia zerumbet (Pers.)	Shell ginger; Pink porcelain lily; Shell plant

Figure: 10 TAC §53.31(m)

AMFI	**Form of Assistance**
≤30% AMFI	0% interest, 5-year deferred, forgivable loan, or grant agreement.
>30% and ≤50% AMFI	0% interest, 10-year deferred, forgivable loan, or grant agreement.
>50% and ≤60% AMFI	0% interest, 15-year deferred, forgivable loan, or grant agreement.
>60% and ≤80% AMFI	0% interest, 15-year term repayable loan.

Figure: 10 TAC §60.307

Event of Noncompliance	**Administrative penalty up to:**
Failure to comply with the Next Available Qualifying Unit Rule.	$50 per violation.
Owner failed to execute required lease provisions, including language required by §60.110 of this chapter.	$50 per violation.
Development substantially changed the scope of services presented at initial application without prior department approval.	$500 per violation.
Change in ownership or General Partner without Department approval.	$500 per violation.
Determination of a violation under the Fair Housing Act.	$1,000 per violation.
Administrative reporting of Uniform Physical Condition Standards ("UPCS") violation.	$50 per unit per day or $50 per day per violation not in a unit but on the property.
Development evicted or terminated tenancy of a low income tenant for other than good cause.	$1,000 per violation.
Failure to provide notary public as promised at application.	$500 per violation.
Failure to maintain or provide Annual Eligibility Certification.	$50 per violation.
Household income above income limit upon initial occupancy.	$1,000 per violation.
Major violations of the UPCS or local health, safety, and building codes.	$1,000 per unit per day or $1,000 per day per violation not within a unit but on the property.
Pattern of minor violations of the UPCS or local health, safety, and building codes.	$250 per unit per day or $250 per day per violation not within a unit but on the property.
Owner failed to submit annual certification.	$1,000 per violation.
Changes in eligible basis.	$500 per day per violation.
Project failed to meet minimum set-aside requirement (20/50, 40/60 test).	$1,000 per day per violation.
Gross rent(s) exceed tax credit limits.	$250 per unit per day per violation.

Event of Noncompliance	Administrative penalty up to:
Project not available to the general public.	$1,000 per day per violation.
Household income increased above income limit and an available unit was rented to market rate tenant.	$500 per violation.
Project is no longer in compliance and is no longer participating in the low-income housing tax credit program.	$1,000 per day per violation.
Owner failed to execute and record extended-use agreement within time prescribed by 26 U.S.C. §42(h)(6)(J).	$1,000 per day per violation.
Low-income units occupied by nonqualified full-time students.	$1,000 per violation.
Owner failed to maintain or provide tenant income certification and documentation.	$250 per violation.
Owner did not properly calculate utility allowance.	$50 per unit per day per violation.
Owner has failed to respond to agency requests for monitoring reviews and fees.	$1,000 per day per violation.
Low-income units used on a transient basis.	$250 per violation.
Failure to comply with additional rent and occupancy restrictions.	$250 per day per violation.
Failure to comply with §60.308 of this chapter, minimum income to rent standards of 2.5 time tenant's rent.	$500 per violation.
Violation(s) of Unit Vacancy Rule.	$250 per violation.
Unit not available for rent. Unit used for non-residential purposes.	$1,000 per unit per violation.
No evidence of, or failure to certify to, material participation of a nonprofit organization or Historically Utilized Business ("HUB").	$5 per day per violation.
No evidence of provision of supportive services.	$5 per day per violation.
Noncompliance with senior project age restrictions.	$5 per day per violation.
Not meeting the prescribed special needs set-aside restriction.	$1,000 per violation.

Event of Noncompliance	Administrative penalty up to:
Failure to rent to Section 8 program households.	$1,000 per violation.
Failure to provide Affirmative Marketing Plan.	$5 per day per violation.
Failure to establish and maintain reserve account.	$250 per day per violation.
Household income increased above 80 percent at recertification and owner failed to properly determine rent (HOME only).	$50 per unit per day per violation.
Failure to provide annual HQS inspection for HOME units.	$500 per violation.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of 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 03/14/11 - 03/20/11 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 03/14/11 - 03/20/11 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-201100959
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 8, 2011

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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 **April 18, 2011.** 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 April 18, 2011.** 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: Addison Enterprises, Inc. dba Lavon Shell; DOCKET NUMBER: 2010-1913-PST-E; IDENTIFIER: RN101622355; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.10(b), by failing to maintain underground storage tanks (UST) records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,322; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Carter Glassblowing, Incorporated; DOCKET NUMBER: 2010-1702-MLM-E; IDENTIFIER: RN105929327; LOCATION: Aubrey, Denton County; TYPE OF FACILITY: industrial glassware fabricator; RULE VIOLATED: 30 TAC §335.62 and §335.503 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications, 30 TAC §335.9, by failing to keep records of hazardous and industrial solid waste activities; and 30 TAC §331.3 and §335.4 and the Code, §26.121, by failing to prevent the disposal of industrial solid waste into an unauthorized injection well; PENALTY: $31,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Arlington; DOCKET NUMBER: 2010-1625-WQ-E; IDENTIFIER: RN104950134; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $7,500; Supplemental Environmental Project (SEP) offset amount of $7,500 applied to performing a cleanup of Lake Arlington in the Village Creek Watershed; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Big Lake; DOCKET NUMBER: 2010-1984-MWD-E; IDENTIFIER: RN101611820; LOCATION: Reagan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010038001, Monitoring and Reporting Requirements Number 1 and 30 TAC §319.7(c), by failing to properly complete discharge monitoring reports (DMRs); TPDES Permit Number WQ0010038001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1), and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for ammonia nitrogen (NH_3N) and total suspended solids (TSS); TPDES Permit Number WQ0010038001, Operational Requirements Number 8.a. and 30 TAC §305.126(a), by failing to initiate engineering and financial planning for expansion or obtain a waiver after exceeding

75% of the permitted daily flow for more than three consecutive months; and 30 TAC §317.4(a)(8) and §317.7(i), by failing to install atmospheric vacuum breakers on two potable water connections used as washdown supply hoses at the facility; PENALTY: $11,934; SEP offset amount of $11,934 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(5) COMPANY: City of Carl's Corner; DOCKET NUMBER: 2009-1496-PWS-E; IDENTIFIER: RN101391852; LOCATION: Carl's Corner, Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; 30 TAC §290.45(b)(1)(B)(i) and TCEQ Agreed Order Docket Number 2003-1372-MLM-E Ordering Provision 3.g.i., by failing to provide a well production capacity of 0.6 gallons per minute per connection; 30 TAC §290.43(c)(2), by failing to ensure that the roof access opening on the ground storage tank remains locked except during inspection and maintenance activities; 30 TAC §290.43(c)(3), by failing to provide the overflow on the ground storage tank with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure a good general appearance of the facility; 30 TAC §290.43(c)(8), by failing to maintain the exterior coating on the ground storage tanks in accordance with American Water Works Association standards; 30 TAC §290.41(c)(3)(J) and TCEQ Agreed Order Docket Number 2003-1372-MLM-E Ordering Provision 3.e.ii., by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions; and 30 TAC §290.46(f)(2) and TCEQ Agreed Order Docket Number 2003-1372-MLM-E Ordering Provision 3.c.i., by failing to provide operating records at the time of the investigation; PENALTY: $9,275; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2010-1991-AIR-E; IDENTIFIER: RN100209436; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: oil and gas production booster station; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to include the 8,150 gallon lube oil tank, Emission Point Number (EPN) LUBE1; three Waukesha water pump engines, EPNs WTRPMP1, WTRPMP2, and WTRPMP3; and three storage tanks, EPNs T-1A, T-2A, and T-3A, authorized under Permit By Rule Registration Number 56754; PENALTY: $1,975; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(7) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2010-1909-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), Air Permit Number 4351, Special Conditions (SC) Number 1, and Federal Operating Permit Number O-01961, General Terms and Conditions and Special Terms and Conditions, by failing to prevent unauthorized emissions; PENALTY: $8,375; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Harris County; DOCKET NUMBER: 2010-1707-MWD-E; IDENTIFIER: RN103016218; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0012213001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limitations for chlorine and flow; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012213001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the DMR for the monitoring period ending September 30, 2009, by the 20th day of the following month; PENALTY: $10,050; SEP offset amount of $10,050 applied to Armand Bayou Nature Center - Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Hines Land and Cattle Company, Limited; DOCKET NUMBER: 2011-0016-EAQ-E; IDENTIFIER: RN106041692; LOCATION: Florence, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a contributing zone plan (CZP) prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 2800 S IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: Mark H. Pine, Trustee of Willow Manor Sewer Trust; DOCKET NUMBER: 2010-1603-MWD-E; IDENTIFIER: RN101239549; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013735001, Other Requirements Number 11.j., by failing to conduct annual soil sampling from the root zone of the overland flow application area; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ00013735001, Operational Requirements Number 1, by failing to properly operate and maintain all systems of treatment and control; 30 TAC §305.125(1) and (5) and §317.4(j)(9) and TPDES Permit Number WQ00013735001, Other Requirements Number 9, by failing to maintain a freeboard of at least two feet in the storage ponds and in the subsurface wetland cells; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ00013735001, Other Requirements Number 8.b., by failing to properly operate and maintain all systems of treatment and control; 30 TAC §305.125(1), (4), and (5) and TPDES Permit Number WQ00013735001, Operational Requirements Number 1 and Permit Conditions Number 2.g., by failing to properly maintain the primary treatment anaerobic cells of the facility; and 30 TAC §305.125(1) and TPDES Permit Number WQ00013735001, Other Requirements Number 11.i, by failing to provide an effluent sampling station following the overland flow system; PENALTY: $9,561; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: North Bay General Hospital, Incorporated; DOCKET NUMBER: 2010-2079-PST-E; IDENTIFIER: RN100586114; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month; 30 TAC §334.7(d)(3) and §334.8(c)(5)(B)(ii), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change or addition and by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the

USTs; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Rayburn Country Municipal Utility District; DOCKET NUMBER: 2010-0347-MWD-E; IDENTIFIER: RN102328564; LOCATION: Sam Rayburn, Jasper County; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), the Code, §26.121(a), and TPDES Permit Number WQ0010788001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations for NH_3N and TSS; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010788001, Sludge Reporting Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009, by September 1, 2009; PENALTY: $10,035; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Ruben Zumaya; DOCKET NUMBER: 2010-1704-PST-E; IDENTIFIER: RN101727964; LOCATION: Splendora, Montgomery County; TYPE OF FACILITY: inactive UST; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST within 30 days of the occurrence of the change; PENALTY: $3,850; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Ryan C. Hoerauf, Incorporated dba O'Ryan Oil and Gas; DOCKET NUMBER: 2010-1827-AIR-E; IDENTIFIER: RN104222245; LOCATION: Kemp, Henderson County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §106.4(c) and §106.6(b) and (c), and THSC, §382.085(b), by failing to maintain operation of the vapor recovery unit during normal facility operations; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: SENTINEL RESOURCES CORPORATION; DOCKET NUMBER: 2010-1503-MSW-E; IDENTIFIER: RN101999506; LOCATION: Richmond, Harris County; TYPE OF FACILITY: waste transfer station; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding fees and associated late fees; PENALTY: $24,000; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: The Queen Ready Mix, Incorporated; DOCKET NUMBER: 2010-1669-IWD-E; IDENTIFIER: RN102913043; LOCATION: Houston, Harris County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: the Code, §26.121(a)(1), 30 TAC §305.125(1), and TPDES General Permit Number TXG110659, Part III Permit Requirements, Section A, by failing to comply with permitted effluent limits for oil and grease, pH, and TSS; 30 TAC §305.125(1) and (17) and TPDES General Permit Number TXG110659, Part IV Standard Permit Conditions 7.(f), by failing to timely submit the DMRs; 30 TAC §305.125(1) and (17) and TPDES General Permit Number TXG110659, Part IV Standard Permit Conditions 7.(f), by failing to timely submit the monitoring results for metals for the annual monitoring period ending February 28, 2010, by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and TPDES General Permit Number TXG110659, Part III Permit Requirements, Section D.3 and Part IV Standard Permit Conditions 7.(f), by failing to timely submit the results for whole effluent toxicity for the annual monitoring period ending February 28, 2010, by the 20th day of the following month; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 796-1025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Western Rim Investors 2007-5, L.P.; DOCKET NUMBER: 2010-1779-EAQ-E; IDENTIFIER: RN105474191; LOCATION: Bexar County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.23(i)(4) and CZP Number 13-08030603 SC Number 5, by failing to obtain approval for modification of a previously approved CZP prior to development of land previously identified in a CZP as undeveloped; 30 TAC §213.23(j) and CZP Number 13-08030603 SC Number 12, by failing to comply with the terms of the approved CZP; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., 512-239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201100936
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 8, 2011

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Enforcement Orders

An agreed order was entered regarding Roberto Mendez and Zoila Mendez, Docket No. 2008-0708-PWS-E on February 28, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Syed Ali and Ahmed Realty GP, L.L.C., both dba Chevron HP #333, Docket Nos. 2006-1471-PST-E and 2009-0236-PST-E on February 28, 2011 assessing $8,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gilbert Espinosa Robles dba Robstown Tire Service, Docket No. 2009-0949-PST-E on February 28, 2011 assessing $8,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2009-1247-AIR-E on February 28, 2011 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joey Sisca, Docket No. 2009-1566-LII-E on February 28, 2011 assessing $900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company L.P., Docket No. 2009-1714-MLM-E on February 28, 2011 assessing $303,294 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MCCRAW OIL COMPANY, INC. dba Kwik Check 42, Docket No. 2009-1752-PST-E on February 28, 2011 assessing $19,222 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Clarence W. Nerren, Docket No. 2009-1771-MLM-E on February 28, 2011 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed corrective action order was entered regarding DCP Midstream, LP, Docket No. 2009-1821-AIR-E on February 28, 2011 assessing $755,251 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark Perkins, Docket No. 2009-1857-OSI-E on February 28, 2011 assessing $2,479 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Asad Rizvi, Docket No. 2010-0102-PST-E on February 28, 2011 assessing $6,026 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Clayton Whitson dba C & N Landscaping, Docket No. 2010-0311-LII-E on February 28, 2011 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fred Martinez dba Tejas Lawn Care, Docket No. 2010-0312-LII-E on February 28, 2011 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jerry Simmons, Docket No. 2010-0334-MSW-E on February 28, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aruba Petroleum, Inc., Docket No. 2010-0365-AIR-E on February 28, 2011 assessing $35,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wanda Dean, Docket No. 2010-0415-PST-E on February 28, 2011 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Karen Mengelkamp, Docket No. 2010-0493-PST-E on February 28, 2011 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding 2300 Sugar Sweet Realty, LLC, Docket No. 2010-0548-IHW-E on February 28, 2011 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2010-0588-WQ-E on February 28, 2011 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Oakhollow MH Park, LLC dba Oak Hollow Mobile Home Park and Gary Don Stahlheber dba Oak Hollow Mobile Home Park, Docket No. 2010-0701-PWS-E on February 28, 2011 assessing $1,391 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Autozone Texas, L.P., Docket No. 2010-0736-PWS-E on February 28, 2011 assessing $2,104 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jackie Hill, Docket No. 2010-0833-MSW-E on February 28, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Deport, Docket No. 2010-0915-MWD-E on February 28, 2011 assessing $11,600 in administrative penalties with $2,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2010-0926-AIR-E on February 28, 2011 assessing $22,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0976-AIR-E on February 28, 2011 assessing $26,950 in administrative penalties with $5,390 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cockrell Hill, Docket No. 2010-0982-PWS-E on February 28, 2011 assessing $2,430 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-0985-AIR-E on February 28, 2011 assessing $363,829 in administrative penalties with $72,765 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Del Rio, Docket No. 2010-1028-MLM-E on February 28, 2011 assessing $2,905 in administrative penalties with $581 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Escambia Operating Co. LLC, Docket No. 2010-1037-AIR-E on February 28, 2011 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2010-1041-IWD-E on February 28, 2011 assessing $3,900 in administrative penalties with $780 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2010-1059-AIR-E on February 28, 2011 assessing $70,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Control and Improvement District No. 119, Docket No. 2010-1066-PWS-E on February 28, 2011 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Timothy Bradberry dba Cooley Point, Docket No. 2010-1068-PWS-E on February 28, 2011 assessing $2,557 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Waste Disposal Authority, Docket No. 2010-1076-AIR-E on February 28, 2011 assessing $17,100 in administrative penalties with $3,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flying J Transportation LLC dba Flying J Travel Plaza Transportation Shop, Docket No. 2010-1093-PST-E on February 28, 2011 assessing $3,282 in administrative penalties with $656 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Liberty, Docket No. 2010-1096-MWD-E on February 28, 2011 assessing $36,733 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANANTKRUPA ENTERPRISE LLC dba Diamond Mart, Docket No. 2010-1138-PST-E on February 28, 2011 assessing $4,901 in administrative penalties with $980 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-1154-AIR-E on February 28, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank James Pokluda dba Circle N Grocery, Docket No. 2010-1167-PST-E on February 28, 2011 assessing $14,050 in administrative penalties with $2,810 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Majestic Fuel Supplies, LLC dba Vecta Food Store, Docket No. 2010-1169-PST-E on February 28, 2011 assessing $2,598 in administrative penalties with $519 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OCHO NLSS MG CORPORATION dba Sams Food Mart 4, Docket No. 2010-1173-PST-E on February 28, 2011 assessing $2,742 in administrative penalties with $548 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KM Liquids Terminals LLC, Docket No. 2010-1205-AIR-E on February 28, 2011 assessing $4,550 in administrative penalties with $910 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Forest Products Texas LLC, Docket No. 2010-1214-IWD-E on February 28, 2011 assessing $22,200 in administrative penalties with $4,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sherwin Alumina Company, LLC, Docket No. 2010-1216-IHW-E on February 28, 2011 assessing $1,650 in administrative penalties with $330 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (325) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FARMERS COOPERATIVE ASSOCIATION OF O'DONNELL, TEXAS, Docket No. 2010-1238-PST-E on February 28, 2011 assessing $3,800 in administrative penalties with $760 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SARD ENTERPRISES, INC. dba LaPorte Chevron, Docket No. 2010-1240-PST-E on February 28, 2011 assessing $2,528 in administrative penalties with $505 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LGI HOMES, LTD. and Quadvest, L.P., Docket No. 2010-1264-MWD-E on February 28, 2011 assessing $5,680 in administrative penalties with $1,136 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cargill Meat Solutions Corporation, Docket No. 2010-1265-AIR-E on February 28, 2011 assessing $37,926 in administrative penalties with $7,585 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kinder Morgan Treating LP, Docket No. 2010-1269-AIR-E on February 28, 2011 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-1272-AIR-E on February 28, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Georgena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2010-1279-AIR-E on February 28, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bellevue, Docket No. 2010-1287-MWD-E on February 28, 2011 assessing $3,240 in administrative penalties with $648 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARS CONVENIENCE, INC. dba La Porte Shell, Docket No. 2010-1296-PST-E on February 28, 2011 assessing $2,580 in administrative penalties with $516 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron U.S.A. Inc., Docket No. 2010-1310-IWD-E on February 28, 2011 assessing $405 in administrative penalties with $81 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2010-1312-AIR-E on February 28, 2011 assessing $8,067 in administrative penalties with $1,613 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2010-1315-AIR-E on February 28, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RODOS ONE, LLC dba Cypresswood Shell, Docket No. 2010-1317-PST-E on February 28, 2011 assessing $5,775 in administrative penalties with $1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Keith Roy dba Keith's Stump Grinding, Docket No. 2010-1321-MLM-E on February 28, 2011 assessing $1,865 in administrative penalties with $373 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Livingston Water Supply And Sewer Service Corporation, Docket No. 2010-1323-PWS-E on February 28, 2011 assessing $392 in administrative penalties with $78 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2010-1328-EAQ-E on February 28, 2011 assessing $3,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Angelo Packing Company, Inc., Docket No. 2010-1347-IWD-E on February 28, 2011 assessing $20,573 in administrative penalties with $4,114 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pampa, Docket No. 2010-1357-AIR-E on February 28, 2011 assessing $1,290 in administrative penalties with $258 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Emmett Hartzog, Jr., Docket No. 2010-1381-MWD-E on February 28, 2011 assessing $17,500 in administrative penalties with $3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RESTAURANT SERVICE, LLC, Docket No. 2010-1383-MWD-E on February 28, 2011 assessing $1,260 in administrative penalties with $252 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noltex L.L.C, Docket No. 2010-1386-AIR-E on February 28, 2011 assessing $6,200 in administrative penalties with $1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Philip Meyer, Docket No. 2010-1389-PST-E on February 28, 2011 assessing $6,437 in administrative penalties with $1,287 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EASTGREEN, INC. dba AIG Technologies Data Center, Docket No. 2010-1390-PST-E on February 28, 2011 assessing $6,513 in administrative penalties with $1,302 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Refugio, Docket No. 2010-1391-MWD-E on February 28, 2011 assessing $2,425 in administrative penalties with $485 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN J. HEBERT DISTRIBUTOR INC. dba J J Chevron 4, Docket No. 2010-1401-PST-E on February 28, 2011 assessing $6,257 in administrative penalties with $1,251 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rhome, Docket No. 2010-1404-MWD-E on February 28, 2011 assessing $8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIRST MINIT MARKIT INC. dba First Minit Markit, Docket No. 2010-1407-PST-E on February 28, 2011 assessing $2,525 in administrative penalties with $505 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PPG Industries, Inc., Docket No. 2010-1413-WR-E on February 28, 2011 assessing $1,620 in administrative penalties with $324 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Demontrond Buick Company, Docket No. 2010-1426-PWS-E on February 28, 2011 assessing $6,477 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PANOLA-BETHANY WATER SUPPLY CORPORATION, Docket No. 2010-1451-MLM-E on February 28, 2011 assessing $3,014 in administrative penalties with $602 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Combined Relocation Services, Inc. dba Matt Patterson Custom Homes, Docket No. 2010-1464-WQ-E on February 28, 2011 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanson Brick East, LLC, Docket No. 2010-1470-AIR-E on February 28, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The George Foundation, Docket No. 2010-1475-PST-E on February 28, 2011 assessing $4,750 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.S.G. FUEL SERVICE, INC. dba Exxon Food Mart, Docket No. 2010-1480-PST-E on February 28, 2011 assessing $9,915 in administrative penalties with $1,983 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridgett Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIMS MEAT CO., INC. dba Mims Meat Company, Docket No. 2010-1483-PST-E on February 28, 2011 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lamb's Real Estate Investment I, LLC dba Lamb's Tire and Automotive Centers, Docket No. 2010-1485-EAQ-E on February 28, 2011 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Gas Gathering, L.L.C., Docket No. 2010-1539-AIR-E on February 28, 2011 assessing $58,900 in administrative penalties with $11,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE BAR TRUCK CORRAL, INC., Docket No. 2010-1554-PST-E on February 28, 2011 assessing $13,000 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazos Electric Power Cooperative, Inc., Docket No. 2010-1557-AIR-E on February 28, 2011 assessing $2,075 in administrative penalties with $415 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cedar Hill, Docket No. 2010-1561-WQ-E on February 28, 2011 assessing $5,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ocean Mobile Home Park, LLC, Docket No. 2010-1582-PWS-E on February 28, 2011 assessing $240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradise Independent School District, Docket No. 2010-1593-MWD-E on February 28, 2011 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Center, Docket No. 2010-1594-MWD-E on February 28, 2011 assessing $8,692 in administrative penalties with $1,738 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Structural Metals, Inc., Docket No. 2010-1606-IWD-E on February 28, 2011 assessing $6,200 in administrative penalties with $1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Ira Betts, Docket No. 2008-1814-PST-E on March 2, 2011 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Landon K. Cruse, Docket No. 2010-1917-WOC-E on February 28, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding EOG Resources, Inc., Docket No. 2010-1964-WR-E on February 28, 2011 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201100978

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §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 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 **April 18, 2011.** 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 18, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: National Priority Enterprises, Inc. d/b/a Food Mart #1; DOCKET NUMBER: 2010-1281-PST-E; TCEQ ID NUMBER: RN102041571; LOCATION: 7120 Interstate 10 West, Orange, Orange County; TYPE OF FACILITY: four underground storage tanks (USTs); RULES VIOLATED: 30 TAC §115.244(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily inspections of the Stage II vapor recovery system equipment; and 30 TAC §115.246(4) and THSC, §382.085(b), by failing to maintain documentation of all Stage II training for each employee; PENALTY: $2,388; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: New A&S Investments Inc. d/b/a Quickway Food Store 3; DOCKET NUMBER: 2010-0426-PST-E; TCEQ ID NUMBER: RN10175024; LOCATION: 9501 Highway 377 South, Benbrook, Tarrant County; TYPE OF FACILITY: four USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.246(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage

II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to provide release detection for the UST system by failing to conduct reconciliation of inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons and failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(8)(C), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $12,817; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Post Oak Grinding, L.L.C.; DOCKET NUMBER: 2009-0585-MSW-E; TCEQ ID NUMBER: RN105575948; LOCATION: 2600 Post Oak Road, Dallas County; TYPE OF FACILITY: mulching/composting facility; RULES VIOLATED: 30 TAC §328.5(c), by failing to provide a written cost estimate showing the cost of hiring a third party to close the facility by disposing of all unprocessed materials; 30 TAC §328.4(b), by failing to demonstrate compliance with recycling requirements related to limits on storage; 30 TAC §328.5(f), by failing to maintain all records necessary to show compliance with the requirements of limitations on storage of recyclable materials and proof of financial assurance sufficient to cover all closure costs; 30 TAC §328.2(3), by failing to transfer non-recyclable municipal solid waste (MSW) to an authorized facility within one week of receipt; 30 TAC §335.6(a), by failing to provide facility engineering plans for the on-site retention pond that collects and stores leachate from composting activities; PENALTY: $8,440; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Rogelio Saenz dba Roys 1 and Roys 2 and Odilia Saenz dba Roys 1 and Roys 2; DOCKET NUMBER: 2010-0227-PST-E; TCEQ ID NUMBER: RN101831063 and RN101446888; LOCATION: 429 East Santa Gertrudis Street, Kingsville, Kleburg County (RN101831063) 1230 East Santa Gertrudis Street, Kingsville, Kleburg County (RN101446888); TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline (RN101831063) and three USTs and a convenience store with retail sales of gasoline (RN101446888); RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(4)(A)(vi) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(c)(1), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b), (2)(A)(i)(III), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(a) and (c)(1), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.48(c), by failing to conduct effective manual and automatic inventory control procedures for the UST system; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.54(c)(1) and (2) and TWC, §26.3475(c)(1), by failing to provide adequate corrosion protection for a temporary-out-of-service UST system and failing to monitor the UST system which contained a regulated substance for releases; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $26,208; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: Texas Blending and Warehousing Corporation; DOCKET NUMBER: 2010-1365-AIR-E; TCEQ ID NUMBER: RN104370549; LOCATION: 2505 Collingsworth Street, Houston, Harris County; TYPE OF FACILITY: blending, packaging, warehousing, and distribution center; RULES VIOLATED: THSC, §382.085(a) and (b), by failing to prevent unauthorized emissions during an event that occurred on December 25, 2009; PENALTY: $1,875; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Veolia Es Technical Solutions, L.L.C. f/k/a Onyx Environmental Services, L.L.C.; DOCKET NUMBER: 2010-0272-MLM-E; TCEQ ID NUMBER: RN102599719; LOCATION: 7665 State Highway 73, Port Arthur, Jefferson County; TYPE OF FACILITY: commercial hazardous waste treatment, storage, and disposal plant with a hazardous waste incinerator; RULES VIOLATED: 30 TAC §335.152(a)(3), 40 Code of Federal Regulations (CFR), §264.16(3)(iv), Industrial and Hazardous Waste (IHW) Permit Number 50212, Provisions (II)(A)(2), (C)(1)(k), (2)(c), and (III)(E)(1), by failing to implement required procedures in a response plan during an emergency; 30 TAC §113.620 and §116.115(c), 40 CFR §264.347(a) and (d) and §63.1206(c)(3)(iii), and Texas Health and

Safety Code (THSC), §382.085(b), IHW Permit Number 50212, Provisions (II)(A)(2), (V)(H)(7)(a), (e) and (f), and New Source Review (NSR) Permit Number 42450, Special Condition (SC) Numbers 9 and 26.F, by failing to continuously monitor and record incinerator operating parameters; and 30 TAC §§113.620, 116.115(c), and 305.142, 40 CFR §63.1209(j) and §264.345(a), THSC, §382.085(b), IHW Permit Number 50212, Provisions (II)(A)(2) and (V)(H)(3)(d), NSR Permit Number 42450, SC Number 13, by failing to maintain minimum operating conditions; PENALTY: $17,840, Supplemental Project (SEP) offset amount of $8,920 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201100942
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 8, 2011

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 18, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 18, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Felipe J. Aguirre; DOCKET NUMBER: 2010-1605-PST-E; TCEQ ID NUMBER: RN101823987; LOCATION: west side of Farm-to-Market (FM) Road 117 approximately one-half mile from the intersection of FM 117 and Highway 57, Batesville, Zavala; TYPE OF FACILITY: underground storage tank (USTs) system and a former retail gasoline station and grocery; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to notify the agency of the change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0019115U for Fiscal Years 2002-2007; PENALTY: $3,850; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Georgetown Kidney Center, LLC; DOCKET NUMBER: 2010-1375-EAQ-E; TCEQ ID NUMBER: RN105943500; LOCATION: 201 FM Road 971, Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,000; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Jerry Todd Stephens dba Sugar Hill Development; DOCKET NUMBER: 2010-0578-WQ-E; TCEQ ID NUMBER: RN105206247; LOCATION: 875 Sugar Hill Road, Reno, Lamar County; TYPE OF FACILITY: sand mining operation; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector Industrial General Permit (MSGP) Number TXR05W330 Part II Section C.3 and Part III Sections A.2(a) and 4(c), by failing to properly develop a Storm Water Pollution Prevention Plan (SWP3); 30 TAC §305.125(1) and TPDES MSGP Number TXR05W330 Part III, Section D.1(c), by failing to obtain a representative sample at the outfall; and TWC, §26.121(a), by failing to prevent an unauthorized discharge of sediment into water in the state; PENALTY: $14,184; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Mac Singh dba Cal Pro Express; DOCKET NUMBER: 2010-1513-MSW-E; TCEQ ID NUMBER: RN105911986; LOCATION: Interstate 20 and FM Road 603, Clyde, Callahan County; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §327.5(c), by failing to submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill; PENALTY: $1,050; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Teresa K. Young; DOCKET NUMBER: 2010-1314-WOC-E; TCEQ ID NUMBER: RN104626049; LOCATION: east of United States (US) Route 75, one mile south of the intersection of State Route 121 and US Route 75, Collin County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(c) and §37.003 and 30 TAC §30.5(a) and §30.331(b), by failing to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater; PENALTY:

$750; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Texas Auto World LP; DOCKET NUMBER: 2010-1339-PST-E; TCEQ ID NUMBER: RN102019973; LOCATION: 11321 Leopard Street, Corpus Christi, Nueces County; TYPE OF FACILITY: four USTs and a former gas station; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or addition information regarding the UST within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,850; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Vickers Industrial Coatings, Inc.; DOCKET NUMBER: 2010-0519-IHW-E; TCEQ ID NUMBER: RN101517399; LOCATION: 16537 Shady Lane, Channelview, Harris County; TYPE OF FACILITY: property with an inactive protective paint coatings manufacturing facility; RULES VIOLATED: 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; 30 TAC §§335.62, 335.503, 335.504 and 40 Code of Federal Register (CFR) §262.11; by failing to conduct hazardous waste determinations; 30 TAC §335.9(a)(2), by failing to submit complete and correct Annual Waste Summary reports by the report due date; 30 TAC §335.69(a)(2), (f)(4)(A) and 40 CFR, §262.34(a)(2), (3) and (d)(4), by failing to mark containers storing hazardous waste with the words "Hazardous Waste"; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; and 30 TAC §335.2(a) and 40 CFR §262.34 and §270.1(c), by failing to prevent unauthorized storage of industrial hazardous waste; PENALTY: $93,520; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201100943

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 8, 2011

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Notice of Water Quality Applications

The following notice was issued on February 18, 2011 through March 4, 2011.

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

EXXONMOBIL OIL CORPORATION which operates the Mobil Chemical Beaumont Chemical Plant (BMCP), a petrochemical plant manufacturing olefins, aromatics, specialty organic chemicals, and inorganic catalytic preparations, has applied for a major amendment to TPDES Permit No. WQ0000462000 to authorize an increase in the total zinc limits for Outfall 001, based on site-specific aquatic life criteria developed using the water effect ratio (WER) procedure; removal of total zinc daily average limit; replace the limits for total suspended solids at Outfall 001 with a monitor only requirement; add waste streams to the list of utility and miscellaneous wastewaters in Other Requirements, Item 6 (demineralized water, wastewaters from water treatment processes, clarification, demineralization, reverse osmosis and laboratory wastewater); removal of the prohibition on wastewater discharge; change street name in the facility address from Gulf States Utility Road to Gulf States Road; determine if a limit for oil and grease for Outfall 001 was inadvertently omitted; update the facility description; change the due date for discharge monitoring reports from the 20th of the month to the 25th; change the description of Outfall 001 monitoring location on page 2b to reflect the name of facility. The application also includes the results of the review by the EPA of the final WER study for zinc for the Neches River Tidal in Segment No. 0601 of the Neches River Basin. EPA's review of final WER study indicates that the statewide water quality criteria for zinc may be adjusted to account for site-specific physical and chemical interactions which mitigate the toxicity of zinc to aquatic organisms. The zinc WER of 2.89 was approved by the EPA on July 7, 2010. The current permit authorizes the discharge of storm water and utility/miscellaneous wastewaters commingled with deminimus (minimal) quantities of process wastewater on an intermittent and flow variable basis via Outfall 001. The facility is located at 2775 Gulf States Road, in the City of Beaumont, Jefferson County, Texas 77701.

CITY OF GILMER has applied for a renewal of TPDES Permit No. WQ0010457001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located on the northern bank of Sugar Creek, approximately 1.4 miles east of U.S. Highway 271 in Upshur County, Texas 75644.

CONROE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013690001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 2,000 feet south of Farm-to-Market Road 2090 and 600 feet west of Farm-to-Market Road 1485 and 10 miles southeast of the City of Conroe in Montgomery County, Texas 77306.

PAMPA ENERGY CENTER LLC which operates the Pampa Energy Center, has applied for an amendment with renewal of TCEQ Permit No. WQ0002891000, to remove tracts K and Q from the approved irrigation areas. The current permit authorizes the disposal of cooling tower blowdown at a daily average flow not to exceed 650,000 gallons per day via irrigation of 118 acres; and the disposal of treated process wastewater and process storm water at a daily average flow not to exceed 1,250,000 gallons per day via irrigation of 382 acres. The draft permit authorizes the disposal of cooling tower blowdown at a daily average flow not to exceed 650,000 gallons per day via irrigation of 63 acres; and the disposal of treated process wastewater and process storm water at a daily average flow not to exceed 1,250,000 gallons per day via irrigation of 382 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located southwest of the intersection of U.S. Highway 60 and Farm-to-Market Road 2300, approximately 3.5 miles southwest of the City of Pampa, Gray County, Texas.

CEMEX CONSTRUCTION MATERIALS SOUTH LLC has applied for a major amendment to TCEQ Permit No. WQ0004636000. The proposed amendment requests an increase in the volume of and additional acres for the surface disposal of wastewater treatment plant sewage sludge and water treatment plant sludge to a total of approx-

imately 219.74 acres of land used as the monofill area. This permit will not authorize a discharge of pollutants into waters in the State. The sludge disposal site is located approximately 30 miles east of the City of El Paso, approximately 5 1/2 miles northeast of the intersection of Hueco Ranch Road and U.S. Highway 62/180 in Hudspeth County, Texas 79938.

P E N JOINT TENANTS AND NORTH CAMERON REGIONAL WATER SUPPLY CORPORATION which operates North Cameron Regional Wastewater Treatment Plant, has applied to amend TPDES Permit No. WQ0004758000 for a major amendment with renewal of TPDES Permit No. WQ0004758000 to authorize a reduction in effluent monitoring frequency for total dissolved solids, and to increase the daily maximum effluent limit for total dissolved solids. The current permit authorizes the discharge of membrane washwater, washwater from raw waterline cleaning, and reverse osmosis reject water at a daily average effluent flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located along the north side of State Highway 107, approximately 3.5 miles west of the intersection of State Highway 107 and U.S. Highway 77 in Harlingen, Cameron County, Texas 78552.

CITY OF CENTER has applied for a renewal of TPDES Permit No. WQ0010063003 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,770,000 gallons per day. The facility is located approximately 3000 feet southwest of the intersection of Farm-to-Market Road 2788 (Stardis Road) and State Highway 7 in Shelby County, Texas 75935.

CITY OF COMMERCE has applied for a major amendment to TPDES Permit No. WQ0010555001 to authorize the removal of the WET limit from the Biomonitoring requirements; and to add a sludge monofill. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Market Road 3218 in Hunt County, Texas 75428.

CITY OF BECKVILLE has applied for a renewal of TPDES Permit No. WQ0010718001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located approximately 0.6 mile southeast of the intersection of State Highway 149 and Farm-to-Market Road 124, adjacent to Wall Branch, south of the City of Beckville in Panola County, Texas 75631.

CITY OF WINFIELD has applied for a renewal of TPDES Permit No. WQ0012146001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 84,000 gallons per day. The facility is located approximately 400 feet north of Interstate Highway 30 access road and 1,500 feet west of Farm-to-Market Road 1734 in the City of Winfield in Titus County, Texas 75493.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 17 has applied for a renewal of TPDES Permit No. WQ0012247001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 275,000 gallons per day. The facility is located approximately 5 miles west-northwest of the intersection of State Highway 6 and Interstate Highway 10, on the north bank of the South Mayde Creek in Harris County, Texas 77449.

MARC ROGER MEEKER has applied for a renewal of TPDES Permit No. WQ0013601001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,500 gallons per day. The facility is located on Highway 75, approximately 0.7 mile north of the intersection of Highway 75 and Shepard Hill Road in Montgomery County, Texas 77378.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0014018001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located approximately 9.9 miles west of the intersection of State Highway 105 and Interstate 45 and approximately 600 feet directly west of the intersection of State Highway 105 and Lake Conroe Village Boulevard in Montgomery County, Texas 77316.

SOUTHERN UTILITIES COMPANY has applied for a renewal of TPDES Permit No. WQ0014079001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 14,400 gallons per day. The facility is located on Farm-to-Market Road 346, approximately 2.8 miles south of the intersection of Farm-to-Market Road 346 and Farm-to-Market Road 344 in Cherokee County, Texas 75757.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014357001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 301 Parkhaven, approximately 2.25 miles west of the Lake Conroe spillway and 1,000 feet south of State Highway 105 in Montgomery County, Texas 77316.

QUADVEST L P has applied for a renewal of TPDES Permit No. WQ0014675001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 2,400 feet southeast of the intersection of Bauer Road and Botkins Road in Harris County, Texas 77477.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment to Grape Creek Independent School District, TCEQ Permit No. WQ001424200. The staff initiated minor amendment is to replace in its entirety Special Provision No. 7 (Soil Testing Plan) of the current permit. The replacement text provides clarification to the permittee regarding appropriate soil test procedures for soil analysis. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,600 gallons per day via subsurface drip irrigation of 2.2 acres of school athletic field. The wastewater treatment facilities and disposal site are located 3,800 feet north of the intersection of Farm-to-Market Road 2288 and U. S. Highway 87 in Tom Green County, Texas 76901.

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-201100976
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2011

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Notice of Water Rights Applications

Notices issued March 1, 2011 through March 4, 2011.

APPLICATION NO. 12598; Advanced Hydro, Inc., 2324 Ridgepoint Drive, Suite G, Austin, Texas 78754, Applicant, seeks a temporary water use permit to divert and use not to exceed 36 acre-feet of water from

Brownsville Ship Channel, Nueces-Rio Grande Coastal Basin, within a period of 18 months for industrial purposes in Cameron 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 June 11, 2010. Additional information and fees were received on June 18, 2010 and July 21, 2010. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 27, 2010. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to the expiration of the permit 18 months from issuance. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by March 22, 2011.

APPLICATION NO. 14-5474; The Lower Colorado River Authority (LCRA), P.O. Box 220, Austin, Texas 78767, Applicant, has applied for an extension of time to commence and complete construction of the Baylor Creek Dam and Reservoir on Baylor Creek, Colorado River Basin, in Fayette County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on September 17, 2009. The application was declared administratively complete and accepted for filing on November 16, 2009. The TCEQ Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the application extending the time to commence construction to September 18, 2014 and to complete construction to September 18, 2017. The application and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78711-3087. 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. 14-5474A; Lower Colorado River Authority, P.O. Box 220, Austin, Texas 78767, Applicant, has applied to amend Certificate of Adjudication No. 14-5474 to do the following: Increase the authorized impoundment amount of Cedar Creek and Baylor Creek Reservoirs in Fayette County and raise the authorized elevation of those reservoirs; impound all local inflows from Cedar Creek and Baylor Creek watersheds in the Colorado River Basin; eliminate the limitations on consumptive use related to the stage of construction of electrical generating facilities and instead authorize consumptive use of 38,101 acre-feet of water per year regardless of the stage of construction; require releases under Certificates of Adjudication Nos. 14-5478 and 14-5482 to compensate for requested impoundment of all inflows from Cedar Creek and Baylor Creek watersheds; and revise multiple special conditions. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on September 17, 2009, and additional information and fees were received on December 10, 2009. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 29, 2009. The Executive Director completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions related to instream flow requirements and the protection of other water rights. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78711-3087. 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.

APPLICATION NO. 5383A; Town of Addison (Applicant), 16801 Westgrove Drive, Addison, Texas 75001-5190, has applied to amend Water Use Permit No. 5383 to increase the storage capacity of its authorized reservoir on Farmers Branch Creek, Trinity River Basin and add public parks as an authorized use. Applicant also seeks to construct and maintain a second dam and reservoir on Farmers Branch Creek for recreation and public parks use in Dallas County. In addition, Applicant seeks to use the bed and banks of Farmers Branch Creek to re-circulate water in Farmers Branch Creek. The application and a portion of the fees were received on November 19, 2009. Additional information and fees were received on March 29, 2010, April 5, 2010 and July 22, 2010. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 10, 2010. The TCEQ Executive Director has completed the technical review of the application and has prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 21-3150A; Frio Canon Water Company, LLC, 4019 Spicewood Springs Road, Austin, Texas 78759, Applicant, has applied for an amendment Certificate of Adjudication No. 21-3150 to add municipal and recreation purposes, to change the place of use, authorize a diversion segment between the two existing diversion points, and increase the diversion rate on the East Frio River, Nueces River Basin in Real County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on April 6, 2010. Additional information and fees were received on June 22, June 25, and August 23, 2010. The application was declared administratively complete and accepted for filing on September 3, 2010. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including but not limited to the installation of screens on the diversion structure. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5852; The Golf Club at Circle C, L.P., 7401 Highway 45, Austin, Texas 78739, Applicant, has applied for a water use permit, pursuant to a Firm Water Contract with the Lower Colorado River Authority, to maintain five existing dams and reservoirs on an unnamed tributary of Danz Creek and Danz Creek, Colorado River Basin, for recreational and agricultural purposes, and an existing off-channel reservoir known as Southwest Austin Regional Irrigation Storage Pond (SARISP), which is adjacent to Danz Creek and connected to Reservoir 1 via pipeline, for agricultural (irrigation) purposes. They also request a bed and banks authorization for Danz Creek to convey groundwater and diffused surface water captured in the SARISP for storage and subsequent diversion. More information on the application and how to participate in the permitting process is given below. Notice of the application was issued on May 19, 2005, to the water right holders of record in the Colorado River Basin, and the comment period ended

July 11, 2005. On October 17, 2008, the applicant amended the application to include a Firm Water Contract with the Lower Colorado River Authority (LCRA), and to include more accurate bearing and distance coordinates. Pursuant to that request, notice is being republished and mailed to all water right holders of record in the Colorado River Basin. The application was received on July 12, 2004. Additional information was received November 4, November 10, 2004, January 10, 2005, February 24, 2005, and April 6, 2005. The application was declared administratively complete and was accepted for filing with the Office of Chief Clerk on April 19, 2005. Additional information was received on April 10, 2006. An amended application was received on October 17, 2008 and that amended application was declared administratively complete and was accepted for filing with the Office of Chief Clerk on May 28, 2009. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including but not limited to, maintenance of an alternate source of water and an accounting plan. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas, 78753. Written public comments and requests for a public meeting should be 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 787113087. 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-201100977

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 9, 2011

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Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2009, through September 30, 2014.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2011 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2011 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 30, 2011.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS website at: http://www.dfps.state.tx.us. The website includes a copy of last year's Title IV-B report. After you go to the website, click "About DFPS," "Reports, Plans, Statistics, and Presentations," and then "Title IV-B State Plan."

Written comments regarding the annual update may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC Y-934; Austin, Texas 78714-9030; telephone (512) 919-7868; fax (512) 339-5927. The comments must be received no later than May 1, 2011.

TRD-201100922
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: March 7, 2011

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective April 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for Physicians and Certain Other Practitioners and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $199,321 for federal fiscal year (FFY) 2011, with approximately $132,469 in federal funds and $66,852 in

State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $424,694, with approximately $247,257 in federal funds and $177,437 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201100895
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: March 4, 2011

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba Heart Hospital of Austin	L06372	Austin	00	02/08/11
Garland	Micropac Industries, Inc.	L06376	Garland	00	02/10/11
Glen Rose	Somervell County Hospital Authority dba Glen Rose Medical Center	L06380	Glen Rose	00	02/25/11
Houston	Rice University Environmental Health and Safety	L06284	Houston	00	02/14/11
Mount Vernon	East Texas Medical Center-Mount Vernon	L06386	Mount Vernon	00	02/22/11
Quitman	East Texas Medical Center-Quitman	L06387	Quitman	00	02/23/11
Throughout TX	Weaver Boos Consultants, L.L.C.	L06395	Fort Worth	00	02/10/11
Throughout TX	4T-NDT & Inspections, L.L.C.	L06397	Mineral Wells	00	02/16/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	50	02/17/11
Angleton	Angleton Danbury Hospital District dba Angleton Danbury Medical Center	L02544	Angleton	35	02/11/11
Arlington	Heartplace, P.A.	L05855	Arlington	08	02/09/11
Arlington	G.E. Healthcare	L05693	Arlington	10	02/23/11
Austin	Worldwide Clinical Trials Clinical Research Services, L.L.C.	L04427	Austin	19	02/14/11
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	115	02/11/11
Austin	Worldwide Clinical Trials Clinical Research Services, L.L.C.	L05723	Austin	07	02/14/11
Austin	Ramming Paving Company, Ltd.	L04666	Austin	10	02/22/11
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	108	02/22/11
Denison	Texoma Heart Group	L05208	Denison	13	02/11/11
El Paso	Isomedix Operations, Inc. dba Steris Isomedix Operations	L04268	El Paso	19	02/07/11
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	68	02/28/11
El Paso	Providence Memorial Hospital	L02353	El Paso	99	02/22/11
Fort Worth	Texas Oncology	L05606	Fort Worth	21	02/14/11
Graham	City of Graham dba Graham Regional Medical Center	L03271	Graham	23	02/10/11
Greenville	Hunt Memorial Hospital District dba Hunt Regional Medical Center	L01695	Greenville	41	02/25/11
Harlingen	South Texas Imaging Center-K, P.A.	L05636	Harlingen	10	02/14/11
Houston	USA Environment, L.P.	L05616	Houston	05	02/15/11
Houston	Diagnostic Cardiology of Houston	L04888	Houston	12	02/14/11
Houston	James A. Smelley, M.D. dba Northwest Eye Associates	L01413	Houston	14	02/15/11
Houston	St. Luke's Episcopal Health System Corporation	L00581	Houston	92	02/11/11
Houston	Zilkha Biomass Crockett, L.L.C.	L06381	Houston	01	02/24/11
Houston	Houston Cyclotron Partners, L.P. dba Cyclotope	L05585	Houston	17	02/25/11
Kerrville	Kerrville Cardiovascular Center, Ltd.	L05334	Kerrville	05	02/16/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Killeen	George S. Rebecca, M.D., FACC	L05099	Killeen	11	02/11/11
La Porte	Braskem America, Inc.	L06292	La Porte	03	02/10/11
Lubbock	Cardinal Health	L02737	Lubbock	62	02/15/11
McAllen	McAllen Hospital, L.P. dba McAllen Medical Center	L01713	McAllen	93	02/11/11
Pasadena	Fairmont Diagnostic Center and Open MRI, Inc. dba Fairmont Diagnostic Center	L05712	Pasadena	08	02/18/11
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	11	02/17/11
Port Lavaca	Seadrift Coke, L.P.	L03432	Port Lavaca	26	02/16/11
Port Neches	TPC Group, L.L.C.	L06106	Port Neches	02	02/10/11
Round Rock	Texas Oncology, P.A.	L06349	Round Rock	02	02/24/11
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	126	02/28/11
San Antonio	Jeremy Nyle Wiersig, M.D., P.A.	L05915	San Antonio	07	02/28/11
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	23	02/23/11
Spring	Professional Service Industries, Inc.	L03642	Spring	27	02/23/11
Stafford	Aloki Enterprise, Inc.	L06257	Stafford	11	02/24/11
Texas City	BP Products North America, Inc.	L00254	Texas City	65	02/11/11
Throughout TX	Kleinfelder Central, Inc.	L01351	Austin	74	02/08/11
Throughout TX	Applied Standards Inspection, Inc.	L03072	Beaumont	115	02/23/11
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	35	02/15/11
Throughout TX	CMJ Engineering, Inc.	L05564	Fort Worth	07	02/11/11
Throughout TX	Gorrondona & Associates, Inc.	L06359	Fort Worth	01	02/14/11
Throughout TX	Stork Testing & Metallurgical	L00299	Houston	136	02/03/11
Throughout TX	Thrubit, L.L.C.	L06030	Houston	10	02/15/11
Throughout TX	Pathfinder Energy Services, L.L.C.	L05236	Katy	23	02/16/11
Throughout TX	Marco Inspection Services, L.L.C.	L06072	Kilgore	35	02/10/11
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	267	02/17/11
Throughout TX	Duininck, Inc.	L03957	Roanoke	19	02/15/11
Throughout TX	Weaver Services, Inc. dba WSI Cased Hole Specialist	L01489	Snyder	36	02/15/11
Throughout TX	Ludlum Measurements, Inc.	L01963	Sweetwater	92	02/17/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Austin White Lime Company	L02941	Austin	11	02/17/11
Denton	Texas Woman's University	L00304	Denton	60	02/15/11
Port Arthur	Total Petrochemicals USA, Inc.	L03498	Port Arthur	28	02/14/11
Throughout TX	Reinhart and Associates, Inc.	L03189	Austin	46	02/10/11
Throughout TX	Turner Specialty Services, L.L.C.	L05417	Nederland	39	02/16/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Heart Hospital IV, L.P. dba Heart Hospital of Austin	L05215	Austin	34	02/08/11
Glen Rose	Glen Rose Medical Foundation, Inc. dba Glen Rose Medical Center	L03225	Glen Rose	28	02/25/11
Midland	Endeavor Energy Resources, L.P.	L05745	Midland	010	02/08/11
Plano	Comprehensive Breast Care Center of Texas, Inc. dba Solis Women's Health	L05601	Plano	14	02/15/11
Throughout TX	Clough Harbour & Associates, L.L.P.	L05355	Sanger	25	02/23/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201100902
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 7, 2011

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Texas Department of Housing and Community Affairs

Announcement of the Neighborhood Stabilization Program Round 3 (NSP3) Notice of Funding Availability (NOFA)

I. Background and Purpose of the Neighborhood Stabilization Program.

(a) The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) (Pub. L 110-289, approved July 30, 2008). The NSP3 allocation of funds is provided under §1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) (Dodd-Frank Act). The purpose of the program is to develop into affordable housing abandoned, foreclosed, and vacant properties in areas that are documented to have the greatest need for declining property values as a result of excessive foreclosures.

(b) The NSP3 NOFA will make approximately $7,284,978 available to organizations for the redevelopment of abandoned, foreclosed, and vacant homes and residential properties. The funds will be awarded based on a competition and the results of a review of applications submitted in response to this NOFA.

II. NSP3 NOFA.

Each applicant will be required to submit a properly completed application. Each applicant's organizational and financial capacity will be evaluated. The application will be available on the Texas Department of Housing and Community Affairs ("Department") website after the Department's Governing Board approves a NOFA. All applications must contain the address of the target property. The Department expects to accept applications beginning on March 14, 2011, and to close the initial round of applications on April 15, 2011. Applications with the highest scores will be presented to the Department's Governing Board of Directors Meeting on June 30, 2011, for possible approval.

III. NSP3 NOFA Qualifications.

Eligible applicants for rental properties are nonprofit organizations as described in §501(c)(3) or (c)(4) of the Internal Revenue Code who are required by federal rules to follow 24 CFR Part 84. Eligible applicants for homebuyer properties are units of general local government (including public housing authorities) who are required by federal rules to follow 24 CFR Part 85, nonprofit organizations as described in §501(c)(3) or (c)(4) of the Internal Revenue Code, who are required by federal rules to follow 24 CFR Part 84, and Housing Finance Corporations authorized under the provisions of the Texas Housing Finance Corporation Act, Texas Government Code, Chapter 394.

IV. Submission of NSP3 NOFA.

Mailing Address:

Ms. Megan Sylvester, Texas NSP Program Administrator

Neighborhood Stabilization Program

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin TX 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery:

221 East 11th Street, 3rd Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery:

If you are hand delivering the application, contact Marni Holloway at (512) 475-3726 (marni.holloway@tdhca.state.tx.us) or Megan Sylvester at (512) 463-2179 (megan.sylvester@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

V. NSP3 NOFA Application Workshop.

The Department will present an application workshop in the form of a webinar on a date to be determined. Participation in the application workshop webinar is not mandatory and will not be a factor in awarding NSP funds.

VI. Questions.

Questions pertaining to the content of the NSP3 NOFA may be directed to Megan Sylvester at (512) 463-2179 (megan.sylvester@tdhca.state.tx.us).

TRD-201100937

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 8, 2011

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Notice of Public Hearing for the Movement of American Recovery and Reinvestment Act (ARRA) Weatherization Assistance Program (WAP) Funds Between Subrecipients

In commitment to the full expenditure of ARRA WAP funds, the Texas Department of Housing and Community Affairs (TDHCA) adopted 10 TAC Chapter 5, Subchapter I, §§5.900 - 5.905, Deobligation and Reobligation of Funds for Department of Energy Weatherization Assistance Program under the American Recovery and Reinvestment Act.

Pursuant to this rule, TDHCA proposes to:

(1) Accept the voluntary relinquishment of ARRA WAP funding from Bee Community Action Agency. On March 8, 2011, Bee Community Action Agency agreed to voluntarily relinquish $380,000 in ARRA WAP funds.

(2) Accept the voluntary relinquishment of ARRA WAP funding from Big Bend Community Action Agency. On March 8, 2011, Big Bend Community Action Agency agreed to voluntarily relinquish $600,000 in ARRA WAP funds.

(3) Obligate ARRA WAP funding to Combined Community Action, Inc., in the amount of $500,000.

(4) Obligate ARRA WAP funding to Community Action Corporation of South Texas, in the amount of $4,000,000.

(5) Accept the voluntary relinquishment of ARRA WAP funding from Community Services Inc. On March 8, 2011, Community Services Inc. agreed to voluntarily relinquish $3,200,000 in ARRA WAP funds.

(6) Accept the voluntary relinquishment of ARRA WAP funding from Concho Valley Community Action Agency. A Corrective Action Notice was sent to Concho Valley Community Action Agency on March 1, 2011. On March 4, 2011, Concho Valley Community Action Agency agreed to voluntarily relinquish $1,200,000 in ARRA WAP funds.

(7) Obligate ARRA WAP funding to Dallas County Department of Health and Human Services, in the amount of $8,778,808.

(8) Obligate ARRA WAP funding to Economic Opportunities Advancement Corporation of Planning Region XI, in the amount of $250,000.

(9) Obligate ARRA WAP funding to City of Fort Worth Department of Housing and Economic Development, in the amount of $1,500,000.

(10) Accept the voluntary relinquishment of ARRA WAP funding from City of Lubbock. On March 8, 2011, City of Lubbock agreed to voluntarily relinquish $600,000 in ARRA WAP funds.

(11) Obligate ARRA WAP funding to Nueces County Community Action Agency, in the amount of $1,500,000.

(12) Accept the voluntary relinquishment of ARRA WAP funding from Panhandle Community Services. A Corrective Action Notice was sent to Panhandle Community Services on March 1, 2011. On March 8, 2011, Panhandle Community Services agreed to voluntarily relinquish $3,200,000 in ARRA WAP funds.

(13) Accept the voluntary relinquishment of ARRA WAP funding from Rolling Plains Management Corporation. On March 4, 2011, Rolling Plains Management Corporation agreed to voluntarily relinquish $3,000,000 in ARRA WAP funds.

(14) Obligate ARRA WAP funding to Sheltering Arms Senior Services. Inc., in the amount of $3,000,000.

(15) Obligate ARRA WAP funding to South Plains Community Action Agency, in the amount of $1,700,000.

(16) Accept the voluntary relinquishment of ARRA WAP funding from South Texas Development Council in the amount of $500,000. On March 4, 2011, South Texas Development Council agreed to voluntarily relinquish $500,000 in ARRA WAP funds.

(17) Obligate ARRA WAP funding to Texoma Council of Governments, in the amount of $1,000,000.

(18) Obligate ARRA WAP funding to Travis County Health and Human Services, in the amount of $2,300,000.

(19) Obligate ARRA WAP funding to City of Austin, in the amount of $2,120,000.

(20) Obligate ARRA WAP funding to City of Beaumont, in the amount of $750,000.

(21) Accept the voluntary relinquishment of ARRA WAP funding from City of El Paso. On March 8, 2011, City of El Paso agreed to voluntarily relinquish $1,300,000 in ARRA WAP funds.

(22) Obligate ARRA WAP funding to City of San Antonio, in the amount of $2,000,000.

The public hearing has been scheduled as follows:

Monday, March 28, 2011, 2:00 p.m.

Room 320, Thomas Jefferson Rusk Building

200 East 10th Street

Austin, Texas 78701

A representative from TDHCA will receive comments regarding the proposed movement of ARRA WAP funds between Subrecipients.

Anyone may comment on the movement of funds in written or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m. Friday, March 25, 2011. Comments regarding movement of funds may be submitted to Ms. Cate Taylor, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711, by electronic mail to cate.taylor@tdhca.state.tx.us, or by fax to (512) 475-3935. If an individual has questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division, Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Cate Taylor, (512) 475-1435 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201100979
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 9, 2011

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) announces the availability of the 2011 Career Guidance and Planning Pilot Request for Proposals. This Request solicits qualified organizations to operate a short-term pilot project to test the "fit" of the bidder's career guidance and planning system with Workforce Solutions. If the system meets our needs, we will consider purchasing/leasing the system on a broader scale.

A proposal package (RFP and attachments) will be available beginning at 10:00 a.m. Central Standard Time on Tuesday, March 8, 2011. You can download it at www.wrksolutions.com and www.h-gac.com. H-GAC will also fill requests for hard copies of the proposal package beginning at that time - contact Carol Kimmick at (713) 627-3200 or send an email to carol.kimmick@h-gac.com. There will be no bidder's conference for this Request. However, you may email questions to carol.kimmick@h-gac.com through Tuesday, March 22, 2011. We will post all questions and answers on our website, www.wrksolutions.com, by close of business Thursday, March 24, 2011. Proposals are due at H-GAC offices on or before 12:00 noon Central Standard Time on Wednesday, April 6, 2011. Mailed proposals must be postmarked no later than Friday, April 1, 2011. H-GAC will not accept late proposals; we will make no exceptions.

TRD-201100957
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: March 8, 2011

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Texas Department of Insurance

Company Licensing

Application to change the name of CHRYSLER INSURANCE COMPANY to COREPOINTE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Farmington Hills, Michigan.

Application to change the name of CITIZENS FIRE INSURANCE COMPANY to VICEROY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Frankfort, Kentucky.

Application to change the name of LM PERSONAL INSURANCE COMPANY to LIBERTY INSURANCE UNDERWRITERS INC., a foreign fire and/or casualty company. The home office is in Hoffman Estates, Illinois.

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-201100970
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 9, 2011

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Lone Star Rail District

Request for Qualifications

Lone Star Rail District (Rail District) seeks responses from qualified consultants to provide local government and stakeholder engagement services related to the Rail District's urban freight rail bypass project.

The Request for Qualifications (RFQ) is available on the Rail District website: www.LoneStarRail.com. Responses to the RFQ must be received by the Rail District no later than 2:00 p.m. CDT April 8, 2011 to be considered.

TRD-201100933
Ross Milloy
President
Lone Star Rail District
Filed: March 7, 2011

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Texas Lottery Commission

Instant Game Number 1351 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1351 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1351 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1351.

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. One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 1351 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

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 $3.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $35,000.

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 (1351), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1351-0000001-001.

K. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

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 CASHWORD" Instant Game No. 1351 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 CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch

the YOUR LETTERS and BONUS play areas. The player must use YOUR LETTERS and the BONUS LETTERS to form words in the BONUS CASHWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". In the BONUS CASHWORD puzzle, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within words are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. 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. One hundred forty-one (141) possible 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, 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;

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 141 (one hundred forty-one) possible 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 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 141 (one hundred forty-one) possible 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. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same number of words.

D. No duplicate words on a ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. The CALLER AREA is defined as the combined YOUR LETTERS and BONUS area.

I. No duplicate play symbols in the CALLER AREA.

J. There will be a minimum of 3 vowels (A, E, I, O and U) in the CALLER AREA.

K. A minimum of 15 play symbols in the CALLER AREA will match at least one letter in the crossword grid.

L. At least one play symbol in the BONUS area will match to at least one letter in the crossword grid.

M. The presence or absence of any letter or combination of letters in the CALLER AREA will not be indicative of a winning or non-winning ticket.

N. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

O. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR LETTERS area.

P. On winning tickets, at least 1 play symbol in the BONUS area will match at least one letter in a completed word.

Q. On non-winning tickets, each crossword grid will have at least 2 completed words.

R. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $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 $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 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of $5,000 or $35,000, 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 CASHWORD" 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 CASHWORD" 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 CASHWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any 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 therefor, 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 therefor, 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 therefore. 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 30,000,000 tickets in the Instant Game No. 1351. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1351 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	3,360,000	8.93
$5	4,320,000	6.94
$10	600,000	50.00
$20	360,000	83.33
$100	61,500	487.80
$500	12,500	2,400.00
$5,000	75	400,000.00
$35,000	50	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.44. 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.

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. 1351 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1351, 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-201100980
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 9, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 7, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39233.

The requested amendment is to expand the service area footprint to include the Town of Lake Tanglewood, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39233.

TRD-201100966
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 7, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc. d/b/a Suddenlink Communications for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39234.

The requested amendment is to expand the service area footprint to include the City of Thorntonville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39234.

TRD-201100967
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 7, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to a State-Issued Certificate of Franchise Authority, Project Number 39235.

The requested amendment is to expand the service area footprint to include the municipality of Bee Cave, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39235.

TRD-201100968
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

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Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order filed with the Public Utility Commission of Texas on March 7, 2011.

Docket Style and Number: Petition of CenterPoint Energy Houston Electric, LLC and AES ES Deepwater LLC for a Declaratory Order, Docket Number 39236.

The Application: CenterPoint Energy Houston Electric, LLC (CenterPoint Energy) and AES ES Deepwater LLC (AES ES Deepwater) seek a declaratory order from the commission to determine that an AES ES Deepwater facility (the facility) should be treated as a new generating facility and interconnected as such pursuant to CenterPoint Energy's Wholesale Tariff and P.U.C. Substantive Rules §§25.191, 25.192, 25.195 and 25.198. The facility is a 40 MW battery-based energy storage facility. The facility is designed to withdraw from and inject into the ERCOT grid at power levels of up to 40 MW. The petitioners requested an expedited procedural schedule to address the issues raised in the petition.

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 Customer Protection Division 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) (800) 735-2989. All correspondence should refer to Docket Number 39236.

TRD-201100964
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 2, 2011, 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 GC Pivotal, LLC for a Service Provider Certificate of Operating Authority, Docket Number 39209.

Applicant intends to provide resale data and telecommunications services.

Applicant's requested SPCOA geographic area comprises 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 March 25, 2011. 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 39209.

TRD-201100896
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 2011

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Notice of Application for Mandatory Two-Way Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on November 23, 2010 of an application seeking approval of an agreement for mandatory two-way extended area service (EAS) between Hill Country Telephone Cooperative, Inc. (HCTC) and the exchanges of Center Point, Comfort, Doss, Fredonia, Frio Canyon (Leakey), Garven Store, Hunt, Ingram, Katemcy, Medina, Mountain Home, Pontotoc, Sisterdale, Streeter, and Tarpley (Petitioning Exchanges) (jointly referred to herein as Petitioners) pursuant to P.U.C. Substantive Rule §26.217.

The agreement would allow HCTC customers within the Petitioning Exchanges to call all other HCTC customers within the Petitioning Exchanges without incurring any long distance charges. The Petitioners do not propose any additional charges to customers.

Persons who wish to intervene in the docket or comment on the application should mail ten copies of their requests to intervene or their comments to:

Public Utility Commission of Texas

Central Records

Attn: Filing Clerk

1701 N. Congress Avenue

P.O. Box 13326

Austin, Texas 78711-3326

The request to intervene or comments should refer to Docket Number 38922, *Joint Application of Hill Country Telephone Cooperative, Inc. and Petitioning Exchanges for Two-Way Expanded Area Service Pursuant to P.U.C. Substantive Rule §26.217.* Persons who wish to

intervene in the docket must also mail a copy of their requests for intervention to all parties in the docket and all persons that have pending motions to intervene, at or before the time the request for intervention is mailed to the commission. Persons who wish to intervene should notify the commission as soon as possible, as an intervention deadline will be imposed. Further information may also be obtained by calling the Public Utility Commission 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. In addition to the intervention deadline, other important deadlines may already exist that affect your participation in this docket. You should review the orders and other filings already made in the docket.

TRD-201100934
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2011

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 4, 2011, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of 10,000 numbers (one code) in the Dallas rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 39230.

The Application: AT&T Texas requested 10,000 numbers (one code) on behalf of its customer, Baylor Healthcare Systems, in the Dallas rate center. AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than March 25, 2011. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39230.

TRD-201100963
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On March 7, 2011, BellSouth Long Distance, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60172. Applicant intends to relinquish the certificate.

The Application: Application of BellSouth Long Distance, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 39238.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39238.

TRD-201100965
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2011

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Request for Comments on Amendments to Telecommunications Licensing Forms

The Public Utility Commission of Texas (commission) requests comments on proposed amendments to applications for telecommunications licensing forms. The amendments are intended to comprehensively update and improve the forms. Project Number 39133 is assigned to this proceeding.

The commission invites comments on the following questions:

Should the commission clarify the final question of the Service Quality Questionnaire for SPCOA and COA Applicants to set out the issues and disputes over which the commission does and does not have the jurisdiction to address? If so, how should the question be modified, and how should each SPCOA and COA applicant convey this information to its customers?

Initial comments are due by April 15, 2011 and reply comments are due by April 22, 2011. Comments may be filed with the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326. Commenters must file 16 copies no later than 3:00 p.m. on the day the comments are due. The comments should reference Project Number 39133.

Questions concerning Project Number 39133 should be referred to Gordon Van Sickle, Infrastructure and Reliability Division, (512) 936-7343 or Scottie Aplin, Legal Division, (512) 936-7289. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201100867
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 2, 2011

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Rio Grande Council of Governments

Request for Statement of Qualifications to Prepare Region E Water Plan

Far West Texas Water Planning Group (Region E) - Request for Statement of Qualifications to Prepare Regional Water Plan for Water Planning Group as Defined by 31 TAC Chapters 355, 357, 358

BACKGROUND

Senate Bill 1 (SB1), 75th Legislature made significant changes in the manner in which state water planning is to be conducted. Notably, SB 1 shifts the emphasis of state water planning from a centralized approach to a regional planning approach. As part of that process, the Texas Water Development Board (TWDB) has designated 16 regional

planning areas and has appointed the initial members of regional planning groups. Each region is to prepare a consensus-based regional water plan and submit that plan to the TWDB by September 1, 2015. The TWDB will then assemble those regional water management plans into a State Water Plan to be submitted to the Texas Legislature.

Region E includes all portions of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, and Terrell counties.

Under the direction of the Region E Far West Texas Water Planning Group (FWTWPG), the consultant shall prepare a regional water plan. The consultant shall also assist the FWTWPG in preparing an appropriate scope of work that adequately addresses all tasks in 31 TAC §357.7 and contains the elements for a scope of work as defined in 31 TAC §357.6(3), i.e., the description of tasks, responsible parties, schedule, and description of deliverables.

In addition to the technical role, the consultant shall assist in the preparation of applications for financial assistance, design and implementation of public involvement activities, including conducting public meetings, reviewing and responding to public comments, and developing educational materials on regional water planning issues for presentation to both technical and non-technical audiences in the region.

Consultants submitting qualifications should be familiar with the rules for state and regional water planning and regional water planning grant assistance adopted by the TWDB (31 TAC Chapter 355, Subchapter C, Regional Water Planning Grant Rules; and 31 TAC Chapter 358, State Water Planning Guideline Rules). These rules contain procedures governing applications for financial assistance related to the development or revision of regional water management plans, and guidelines for the development of the state water plan. Particularly, the rules contain specific time frames and requirements for making application for state financial assistance for the development of the scope of work and budget for the development of the regional water plan, as well as deadlines for the submittal of the scope of work and regional water plan. The schedule for completion and delivery of work products for the FWTWPG shall reflect these publication deadlines.

ADDITIONAL INFORMATION

The purpose of this request for statements of qualifications is to permit the evaluation of the relative professional and technical qualifications of respondents.

The statement of qualifications should be no more than 10 pages in length, including cover letter and resumes of project team members. Responses should address the following:

1. A list of no more than five (5) projects similar to the scope of work discussed herein, with descriptions of the projects, members of the project teams, time schedule, and contact persons who are able to verify the information presented. All projects must have been completed within the past ten (10) years. It is preferred that project descriptions demonstrate the following types of recent work experience:

--regional water planning for various size regions in Texas;

--interactions with diverse interest groups and stakeholders participating in regional water planning;

--facilitating consensus-building and conflict resolution among stakeholders with diverse and potentially-conflicting interests;

--working with the TWDB in reviewing population forecasts and developing and gaining acceptance of alternative forecasts as necessary;

--familiarity with data and information available from the TWDB and other sources;

--familiarity with TWDB's planning grant administration and invoicing requirements;

--knowledge of statutory and regulatory policies affecting water supply, water quality, water conservation, and drought management issues for both surface and groundwater; and

--experience with environmental issues and analyses related to water supply development.

2. Your firm's resources and capabilities: including location, size, staffing, and length of local office's existence in Texas;

3. Any planned subcontractor or joint venture arrangement for the project. Information requested in Items 1 and 2 may be submitted for joint venture partner(s);

4. The capability of your firm to commit necessary resources to the project in order to meet the project schedule;

5. Any additional information you would like FWTWPG to be aware of or which you feel might have a direct bearing on your firm's qualification to perform on the project.

The selection of the successful firm(s) shall be accomplished by a vote of the FWTWPG. Based on the number of responses received and the preference of the members, the FWTWPG may request formal presentations from a short list of selected firms for the project.

SCHEDULE

March 4, 2011--Approve, advertise, and mail notices for Request for Statement of Qualifications.

April 4, 2011--Statement of Qualifications Due.

April 7, 2011--FWTWPG Meeting.

April/May 2011--Executive Committee review of SOQs and preparation of recommendation; Executive Committee may recommend that short-listed firms make a presentation to the FWTWPG.

May 2011--Fifteen-minute presentations by short-listed consultants if requested by Scoping Committee. FWTWPG selects consultant.

ACKNOWLEDGEMENTS

The submittal either as part of the Statement of Qualifications or the cover letter shall provide the following acknowledgments: Acknowledgment that, if requested, you will prepare and make a presentation to the FWTWPG; Acknowledgment that, if selected, the key individuals of the proposed team will not be changed without the written approval of the FWTWPG; and Acknowledgment that, if selected, you will conform to TWDB rules and requirements for grant funding and invoicing.

The deadline for responses to this request is 5:00 p.m. on Monday, April 4, 2011. One (1) electronic copy in PDF format and twenty-five (25) hard copies of each submittal shall be delivered to Annette Gutierrez, Administrative Agent for the FWTWPG Region E, at the following address:

Annette Gutierrez

Executive Director

Rio Grande Council of Governments

1100 N. Stanton, Suite 610

El Paso, Texas 79902

TRD-201100935

Annette Gutierrez
Executive Director
Rio Grande Council of Governments
Filed: March 8, 2011

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South East Texas Regional Planning Commission

Request for Proposals

The South East Texas Regional Planning Commission seeks a qualified vendor to provide a multi-jurisdictional integrated crime analysis information sharing tool for public safety entities in Hardin, Jefferson and Orange Counties.

Interested parties should mail product specifications, product benefits, expected outcomes and cost per license clearly marked HSEMPD RFP-02 in the upper right hand corner of the sealed envelope no later than 5:00 p.m., on Friday, March 25, 2011 to: Sue Landry or Robert Grimm, South East Texas Regional Planning Commission, 2210 Eastex Freeway, Beaumont, Texas 77703.

A public opening of all proposals received will occur at 9:00 a.m. CDT on Monday, March 28, 2011 at the South East Texas Regional Planning Commission, 2210 Eastex Freeway, Beaumont, Texas 77703.

TRD-201100897
Jim Borel
Director of Finance
South East Texas Regional Planning Commission
Filed: March 4, 2011

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Texas Department of Transportation

Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) with respect to the issuance of bonds. The legal services provided will include the customary and necessary services of one or more law firms to serve in the capacity of bond counsel to the commission, and may include the customary and necessary services of a disclosure counsel, in connection with the issuance, sale, and delivery of bonds, notes, and other public securities on which the interest may be excludable from gross income under existing federal tax law. Firms responding must demonstrate a history of providing expert bond counsel services (including relevant federal income tax and securities law expertise) and advice for governmental agencies, with particular emphasis on experience with the financing of transportation projects. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The commission has the authority under various statutes to operate several bond programs. As such, the commission and the department will need the services of outside counsel with respect to the issuance of bonds under one or more of the following programs:

A. Highway Improvement General Obligation Financing Program. Transportation Code, §222.004, and Texas Constitution, Article III, Section 49-p, authorize the issuance of long-term bonds and other public securities secured by a pledge of the full faith and credit of the State of Texas, proceeds of which are to be used for highway improvement projects. The aggregate principal amount of bonds and other public securities that may be issued may not exceed $5 billion.

B. Texas Mobility Fund Revenue Financing Program. Pursuant to Transportation Code, Chapter 201, Subchapter M, and Texas Constitution, Article III, Section 49-k, the commission is authorized to issue bonds, notes, and other public securities secured by money in the Texas Mobility Fund, the proceeds of which can be used to fund state highway improvement projects, publicly owned toll roads, and other public transportation projects. The commission is also authorized to pledge the full faith and credit of the State of Texas to the payment of obligations if revenue dedicated to and deposited in the Texas Mobility Fund is insufficient for that purpose.

C. State Highway Fund Revenue Financing Program. Transportation Code, §222.003, and Texas Constitution, Article III, Section 49-n, authorize the issuance of long-term bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund, the proceeds of which can be used to fund state highway improvement projects. The aggregate principal amount of bonds and other public securities that may be issued may not exceed $6 billion and is limited to no more that $1.5 billion each year.

D. Project Revenue Bonds. Under Transportation Code, Chapter 228, Subchapter C, the commission is authorized to issue turnpike revenue bonds to pay all or part of the cost of a turnpike project, and to enter into comprehensive development agreements to prosecute projects. In 2002, the commission issued revenue bonds and other public securities in the amount of $2.2 billion to finance the Central Texas Turnpike System 2002 Project.

E. Rail Facility Bonds. Transportation Code, Chapter 91, authorizes the commission to issue revenue bonds to pay all or part of the cost of developing of state-owned rail facilities as defined in Chapter 91. The commission is authorized to issue bonds under the same terms and conditions as bonds are issued with respect to a turnpike project under Transportation Code, Chapter 228.

F. Capitalization of the State Infrastructure Bank. Pursuant to Transportation Code, Chapter 222, Subchapter D, the commission may issue revenue bonds to provide money for the capitalization of the State Infrastructure Bank. Bonds issued under this subchapter are payable only from income and receipts of the State Infrastructure Bank as the commission may designate. The State Infrastructure Bank provides financial assistance by direct loans and a variety of credit enhancements such as lines of credit, letters of credit, bond insurance, and capital reserves.

G. Short-Term Obligations. Transportation Code, §201.115, authorizes the commission to issue short-term obligations with the following limitations: (1) the term of the loan may not exceed two years; (2) the amount of the obligation, plus any other such outstanding obligations may not exceed the average monthly revenue deposited to the state highway fund for the previous 12 months; and (3) the loan is not a general obligation of the state and is payable only as authorized by legislative appropriation.

H. Private Activity Bonds. Transportation Code, §222.035, requires the department to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state.

I. Transportation Corporations. Pursuant to Transportation Code, Chapter 431, the commission may authorize the creation of a corporation to issue bonds on its behalf.

J. Rail Relocation and Improvement. Transportation Code, Chapter 201, Subchapter O, authorizes the issuance of obligations secured by money in the Texas Rail Relocation and Improvement Fund, the proceeds of which can be used to pay the costs of relocating, constructing,

reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities.

Scope of Services: The legal services to be provided by outside counsel may include, but are not limited to, the following tasks:

A. For new issues of bonds, outside counsel will:

(1) Prepare or assist in preparing all orders, agreements, and other instruments pursuant to which bonds will be authorized, secured, sold, and delivered in consultation with the commission and the department, the financial advisor, underwriters and their counsel, and other consultants;

(2) Provide recommendations on the marketing of bonds, including by negotiated sale and/or sale by competitive bids, methods for enhancing the rating, advice on bond covenants, pledge of revenues, flow of funds, legal coverage requirements, and the timing of the issue;

(3) Provide legal advice and assistance on state law, federal tax law, and federal securities law requirements of various financing structures (alternatives), the principal amount of bonds to be sold, maturity schedules, bases of awarding bids, and types of sales;

(4) Represent the commission and the department in the preparation of any contract that provides for the sale of bonds, ensuring that all participants, including underwriters and investment banking firms retained by, or contracting with, the commission and the department, disclose all conflicts of interest;

(5) Request and obtain approval of the issuance of bonds from the Office of the Attorney General and obtain the registration of the bonds or other obligations by the Comptroller of Public Accounts of the State of Texas;

(6) Assist in making presentations and required submissions and obtaining approval of the Bond Review Board, the Legislative Budget Board, and any other State entity with supervisory powers over the issuance of bonds by the commission;

(7) Attend meetings of the commission, Bond Review Board, legislative committees, or other meetings to the extent required or requested;

(8) Attend all document sessions;

(9) Assist in presentations to the major rating agencies, credit enhancers, or prospective purchasers of bonds to the extent requested;

(10) Render a legal opinion concerning the validity and binding nature of the bonds and the security for the bonds under Texas law, the tax-exempt status of the interest thereon under federal income tax laws (if the bonds are to be tax-exempt), the status of the bonds under federal securities law, and other matters consistent with the role of bond counsel;

(11) Prepare or review any IRS filings required by federal tax law;

(12) Render written opinions of bond counsel pertaining to investment earnings and any amounts required to be rebated to the United States as excess arbitrage earnings, if any, and any other written opinions of counsel that may be required under the terms of the order authorizing the issuance of bonds or other obligations or under the Internal Revenue Code, as amended;

(13) Prepare or assist in the preparation of the Preliminary Official Statement, the Final Official Statement, or the Offering Memorandum, as applicable, for each sale, including review of the information therein describing the bonds and the financing documents, the security for the bonds and the federal income tax status thereof, and render the customary opinion with respect to that information. If requested, outside counsel will also render the customary disclosure counsel opinion.

(14) Prepare certain certificates and review such other documents as are customary and necessary in order to structure, issue, and deliver bonds;

(15) Provide advice and counsel on continuing compliance with laws applicable to the issuance of bonds, including ongoing disclosure obligations;

(16) Supervise the printing, if any, execution, and delivery of the bonds to the purchasers, and the printing and binding of the bond transcripts and, if requested, the Offering Memorandum or the Preliminary Official Statement and the Final Official Statement;

(17) After issuance, interpret bond provisions and covenants when requested; and

(18) Provide legal support for all other matters necessary or incidental to the issuance of the bonds or other obligations.

B. Outside counsel will advise the commission and the department on the legality of proposed debt restructuring techniques.

C. Outside counsel will advise the commission and the department on legal ramifications and constraints of proposed investment transactions and the development of investment contracts and investment policies.

D. Outside counsel will advise the department on federal tax laws, especially those pertaining to federal arbitrage/rebate tax laws. It will, if requested, review and "sign off" on all calculations and methodologies undertaken by department staff and outside specialists.

E. In response to real or anticipated changes in state and federal law, regulation, or public policy, outside counsel will advise the commission and the department of the impact on bond issues and investment policy. Outside counsel shall review legislation, recommend legislative action where appropriate, and assist with drafting of legislation at both the federal and state level.

F. Outside counsel will assist in the solicitation and evaluation of proposals for public/private development of transportation projects under comprehensive development agreements and review the proposed financing plans. Outside counsel will report on the conformance of the plans with federal and state securities laws. Outside counsel will assist with the writing of all other legal documents and public notices relating to a comprehensive development agreement, and assist with writing and filing all legal documents required of a public/private partnership financing by all jurisdictional governmental entities.

G. Outside counsel will assist in reviewing and commenting on agreements with the Federal Highway Administration and with political subdivisions relating to the financing of projects.

H. Outside counsel may be requested to assist in writing, issuing, soliciting, and evaluating Requests for Proposals for underwriting services, and prepare recommendations on retention of underwriters and underwriting teams.

I. Outside counsel will provide information on questions and issues posed by the commission and the department on an ad hoc basis.

Form of Response: Responses to this RFP should include at least the following information:

A. Provide a brief history and general description of the firm, including the number of years the firm has been active in rendering bond opinions for governmental issuers, including any agencies of the State of Texas. Describe how the firm is organized and how its resources will be put to work for the commission and the department. Include information relative to the capabilities and resources of its Texas offices and a listing of its Texas office resident personnel by discipline that would be assigned to department projects. Provide a synopsis of the firm's

experience in providing bond counsel and disclosure counsel services to governmental issuers of tax-exempt revenue bonds, with particular attention being given to transportation project financings.

B. Qualifications.

(1) List the governmental issues for which the firm served as lead bond counsel, co-bond counsel, disclosure counsel, underwriters' counsel, or special tax counsel in the past five years. Include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Indicate any issues for transportation projects. Specify for each issue the involvement, if any, of the attorneys who may be assigned to department projects. Tabular format is acceptable.

(2) Select **one** transaction from the above list of governmental issues that best demonstrates the firm's ability to serve the commission and the department and describe in detail the legal and structural issues involved in the transaction and the firm's approach to the analysis. (Two page limit.)

(3) Describe any innovations the firm has developed or worked on for tax-exempt security issues, briefly describing the problem, the solution, and the results.

(4) Outline the firm's experience during the past two years with the major rating agencies and note its potential applicability to the commission and the department.

(5) Describe the firm's expertise and experience in assisting public finance clients in creating new financing programs.

(6) Describe the firm's capabilities in assisting public finance clients in complying with arbitrage regulations and other tax-related requirements. Include a brief description of the firm's experience in securing private letter rulings or other rulings (other than extensions of time or other procedural matters) from the Internal Revenue Service on behalf of any public finance clients, including a representative description of the types of rulings.

(7) Describe the firm's experience with bond enhancement agreements and derivative products in bond transactions.

C. Provide resumes for those individuals who would be assigned to work on department projects, including years of bond counsel experience and number and type of bond issues, and the assigned attorneys whose practice entails the federal income tax matters relating to the issuance of bonds by public entities. Specify who would be assigned as the primary day-to-day contact.

D. Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services generally and bond matters in particular.

E. Identify each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address any conflicts of interest and known potential conflicts.

F. Confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Information submitted in response to this RFP shall not be released by the department during the proposal evaluation process or prior to contract execution. Following execution of a contract, all proposals and the information contained therein may be subject to public disclosure under the Texas Public Information Act.

Term of the Agreement: It is anticipated that the initial contract term will be for the period of September 1, 2011 through August 31, 2012, renewable at the department's option for an additional twelve months. However, the department reserves the right to modify the term of the agreement or other provisions of the contract as may be required by the Office of the Attorney General. The department retains the right to terminate the contract, for any reason, subject to prior written notice. In the event of termination, outside counsel will be paid for all services completed to the effective date of termination plus any necessary services to effectively conclude and transfer ongoing work.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. Proposals should be limited to a maximum of 50 pages, including tables, resumes, and other attachments. The proposal must be executed by a duly authorized representative of the law firm. All proposals become the property of the department. The proposal should be sent by mail or delivered in person, marked "Response to Request for Proposals," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker in the Office of General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation, at the address stated previously, no later than 5:00 p.m. on April 18, 2011. The department has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the department to do so.

Any proposal may be modified or withdrawn, even after the proposal is received by the department, at any time prior to the proposal due date. No material changes will be allowed following the proposal due date; however, non-substantive corrections or deletions may be made with the approval of the department.

Basis of Selection: The department will make its selection based on an evaluation of the firm's demonstrated qualifications, expertise, experience, and competence in providing bond counsel and disclosure counsel services and advice to governmental agencies, particularly with respect to transportation projects, the expertise of the attorneys that will be assigned to work on such matters, and the capabilities and resources of the firm's offices. Additionally, the department may, at its option, conduct interviews as part of the selection process. Evaluation criteria may include the following:

A. The completeness and thoroughness of a firm's response relative to information requested in the RFP;

B. The extent and depth of the firm's qualifications, expertise, experience, reputation, and record of success in providing bond counsel and disclosure counsel services to governmental entities issuing tax exempt bonds, particularly with respect to transportation projects, including the size and number of prior bond issues, experience in complex bond financings and related tax and securities law expertise;

C. The extent and depth of the qualifications, experience, reputation, and record of success of the attorneys that will be assigned to provide outside counsel services, particularly with respect to transportation projects; and

D. The extent to which the firm is organizationally structured to carry out the responsibilities potentially assigned to it and the effectiveness of the resources that will be assigned to the department.

Fees may not be considered and may not be indicated in responses to this RFP. The department will attempt to negotiate a contract at a fair and reasonable price with the firm(s) deemed to be the most highly qualified. If a satisfactory contract cannot be negotiated, the department reserves the right to proceed with another firm.

Issuance of this RFP in no way constitutes a commitment by the department to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. All costs directly or indirectly related to preparation of a response to this RFP, or any oral presentation or supplement that may be required by the department, shall be borne by the responding firm.

TRD-201100971
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 9, 2011

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Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters related to compliance with environmental laws, regulations and rules, both state and federal, affecting the department. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is responsible for planning, designing, constructing, operating, and maintaining the state's transportation system. In connection with these responsibilities, the department must deal with various environmental matters. These matters include, but are not limited to, the following: satisfying environmental review requirements under the National Environmental Policy Act and similar state law; obtaining appropriate permits; answering queries and complaints from state and federal regulatory authorities; complying with environmental laws, rules, and regulations, both state and federal, on an ongoing basis; appearing before administrative and judicial tribunals, both state and federal, to answer charges of a civil or criminal nature, both state and federal; and generally complying with state and federal laws, rules, and regulations applicable to the responsibilities discharged by a state department of transportation. The department intends to engage outside counsel to represent the agency in these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Office of the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available on request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposals," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 18, 2011.

TRD-201100972
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 9, 2011

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Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in representing the department and the Texas Transportation Commission (commission) in a variety of intellectual property matters related to patent, trademark and copyright preparation/prosecution, licensing, opinion work, and litigation support. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is responsible for planning, designing, constructing, operating, and maintaining the state's transportation system. The department continues to develop patentable machines and processes as well as trademarks, service marks, trade secrets, slogans, and copyrighted materials in the course of performing its statutory duties. The department intends to engage outside counsel to advise and represent the agency on matters related

to its intellectual property, including, but not limited to, securing state and federal certifications, patents, and registrations, protecting the department's property rights while registrations are pending, and advising or assisting with any matter directly related to securing registration and international protection of the department's interest in its intellectual property when appropriate. With respect to intellectual property and patent/trademark/copyright issues, outside counsel, in consultation with department staff, will prepare all legal documents required by the U.S. Patent and Trademark Office, the Texas Secretary of State's Office, international registration authorities or other governmental entities, and render opinions on the legality of pending, existing, or proposed patents, trademarks, or copyrighted materials. In addition, counsel shall perform other legal services that do not come within the function of registration or certification, but are necessary for the implementation and administration of the department's intellectual property, such as advising the department on potential claims against other parties or defending the department in relation to its intellectual property. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, federal, state, and international patent, trademark, and copyright law.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Office of the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposals," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 18, 2011.

TRD-201100973
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 9, 2011

Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters related to the innovative financing and development of transportation projects, including the use of public/private partnerships, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is authorized under Transportation Code, Chapter 223, to construct, maintain, repair, operate, extend, or expand toll projects on the state highway system. The department is also authorized under Transportation Code, Chapter 91, to acquire, finance, construct, operate, and maintain rail facilities. Transportation Code, Chapter 223, Subchapter E, authorizes the department to enter into comprehensive development agreements with private entities for the acquisition, financing, design, construction, maintenance, and/or operation of transportation facilities and department toll projects.

The department intends to engage outside counsel to advise and represent the agency in connection with the development of transportation projects (including, without limitation, highway, toll, transit, rail, intermodal, and other related transportation facilities), comprehensive development agreements, and other public/private partnerships. Outside counsel will provide advice to the department in these areas, including providing legal advice and support on the terms of comprehensive development agreements and drafting, negotiating, and administering comprehensive development agreements, as well as legal issues involved in using public/private partnerships for the development of transportation projects, including procurement processes and innovative financing options and the implementation and structuring thereof. Outside counsel shall review legislation when requested by the department, recommend legislative action where appropriate, and assist with the drafting of legislation at the state and federal level. The department invites responses to this RFP from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to public/private partnerships for the development of transportation projects and the innovative financing of those projects is required.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications

for performing legal services in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, locations, and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Office of the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposals," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 18, 2011.

TRD-201100974
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 9, 2011

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University of Houston

Notice of Award of a Major Consulting Contract

In compliance with Chapter 2254, Subchapter B, §2254.030 of the Texas Government Code, the University of Houston ("University") furnishes this notice of consultant contract award. The consultant will advise and assist University related to its operations at M.D. Anderson library and satellite libraries on the University campus. The consultant will provide a comprehensive study of the technical services functions and "selection-to-access" activities of the University Libraries.

The contract was awarded to R2 Consulting, L.L.C., P.O. Box 307, Contoocook, NH 03229, for a amount of not to exceed $60,000.00.

The beginning date of the contract is approximately February 24, 2011 and the ending date is August 1, 2011.

Consultant is expected to present their written report to University on approximately May 20, 2011.

TRD-201100865
Kristen R. Gibson
Associate General Counsel, Executive Director, University of Houston System
University of Houston
Filed: March 2, 2011

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University of North Texas

Invitation for Consultants to Provide Offers of Consulting Services

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in the referenced Request for Proposal (RFP).

Scope of Work:

The selected consulting firm will be responsible for advising, assisting, and training UNT in the Initiative for Maximizing Student Diversity (IMSD) proposal team and other UNT faculty and staff in the development of R-25 grant application for submission to the National Institute of Health (NIH). The consulting services include evaluation, assessment, and recommendations for IMSD proposals and will assist UNT in obtaining funding awards. The scope of work is more fully described in the Request for Proposal (RFP752-11-735ER) located under the Bid Listing Page found at http://pps.unt.edu.

Specifications:

Any consultant submitting an offer in response to this Invitation must provide a response to the RFP posted on the UNT website under the Bid Listings Page found at http://pps.unt.edu.

Selection Process:

The requested consulting services do not relate to services previously provided to UNT.

Selection of the Successful Offer will be made using the competitive process described in the RFP.

Criteria for Selection:

The successful offer will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will be evaluated by UNT personnel. The evaluation of offers and the selection of the successful offer will be based on the information provided to UNT by the consultant in response to the specifications section of the RFP. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

Consultant's Acceptance of Process:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in the RFP; and (2) the consultant's recognition that some subjective judgments must be made by UNT during this process.

The President of UNT has found that the consulting services are necessary because UNT does not have the specialized experience or the staff resources available with expertise in the areas of NIH R-25 grants or the NIH R-25 IMSD program. UNT believes that such expert consulting services will be cost effective, as it will ensure that the evaluation, assessment, and recommendations for IMSD proposals will assist UNT in obtaining funding awards.

Submittal Deadline:

To respond to the RFP, consultants must submit the information requested in the Specification section of the RFP found at http://pps.unt.edu and any other relevant information in a clear and concise written format to: Elaine Robbins, Purchasing Specialist II, University of North Texas, 2310 North Interstate 35-E, Denton, Texas 76205. Offers must be submitted in accordance with and no later than the deadline in the posted RFP.

Questions:

Questions concerning this Invitation should be submitted to: Solicitation Questions located on the Bid Listings page found at http://pps.unt.edu. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-201100975
Carrie Stoeckert
Assistant Director of Bids and Contracts
University of North Texas
Filed: March 9, 2011

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The University of Texas System

Award of Consultant Contract Notification

The University of Texas System ("U.T. System"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services ("Contract") with Deloitte & Touche LLP ("Consultant") as more particularly described in the Invitation for Consultants to Provide Offers of Consulting Services ("Invitation"), published in the *Texas Register* on October 22, 2010 (35 TexReg 9566).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide an evaluation and recommendations for the improvement of the information security programs at U.T. System and its institutions.

Name and Address of Consultant:

Deloitte & Touche LLP

400 West 15th Street Suite 1700

Austin, Texas 78701

Total Value of Contract:

$1,330,000.00

Contract Dates:

The Contract was executed by Consultant on March 2, 2011 and by U.T. System on March 3, 2011, and dated effective March 1, 2011.

Due Dates for Contract Products:

The consulting services will be completed and delivered to U.T. System no later than August 31, 2011.

The term of the Contract expires on August 31, 2011.

TRD-201100944
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: March 8, 2011

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Texas Water Development Board

Applications for March 2011

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73600, a request from the City of Alton, 509 South Alton Blvd., Alton, TX 78573, received November 3, 2010, for a loan, with up to 100% principal forgiveness, in the amount of $9,595,000 from the Clean Water State Revolving Fund - Disadvantaged Communities Program to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #61928, a request from the Eastland County Water Supply District, P.O. Box 16, Ranger, TX 76470, received December 23, 2010, for a loan in the amount of $11,650,000, consisting of a loan for $3,495,000 and loan forgiveness for $8,155,000, from the Drinking Water State Revolving Fund - Disadvantaged Communities Program to finance water system improvements, utilizing the pre-design funding option.

Project ID #61314, a request from the City of Groveton, P.O. Box 37, Groveton, TX 75845, received November 15, 2010, for a grant in the amount of $145,000 from the Economically Distressed Areas Program for the acquisition and design costs for a water system improvement project.

TRD-201100958
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: March 8, 2011

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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 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*