TEXAS REGISTER

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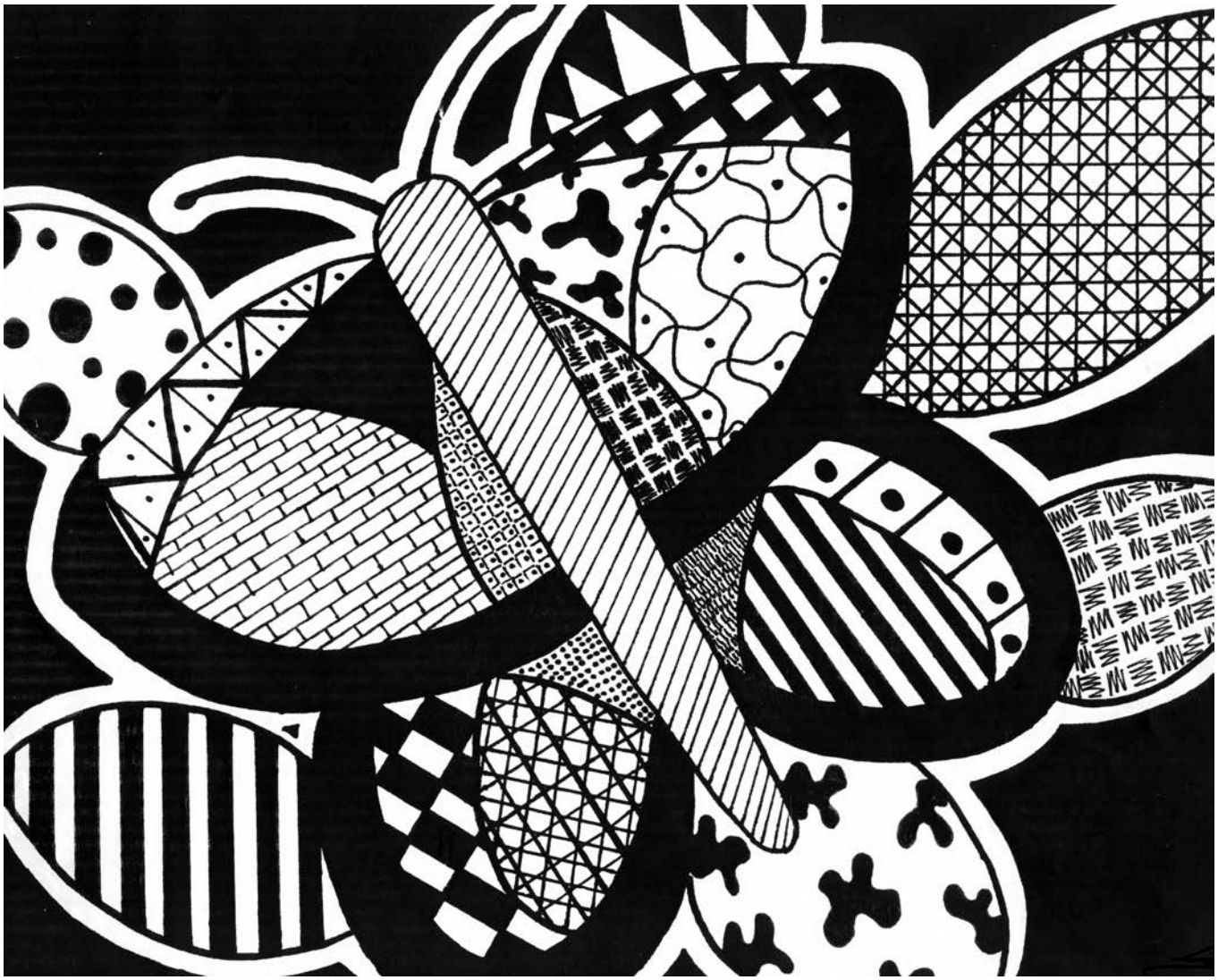

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but 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-1127-GA

Requestor:

The Honorable Ryan Guillen

Chair, House Committee on Culture, Recreation & Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Whether landowners may be liable for the actions of law enforcement officers that occur on the landowners' property or for livestock that escape due to actions over which the landowners have no control (RQ-1127-GA)

Briefs requested by June 17, 2013

RQ-1128-GA

Requestor:

The Honorable Ryan Guillen

Chair, House Committee on Culture, Recreation & Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a state employee may run for and assume an elected county office (RQ-1128-GA)

Briefs requested by June 18, 2013

RQ-1129-GA

Requestor:

The Honorable Bill Callegari

Chair, Committee on Pensions

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a metropolitan transit authority may use the job order contracting method of procurement for construction projects (RQ-1129-GA)

Briefs requested by June 20, 2013

RQ-1130-GA

Requestor:

The Honorable Tracy O. King

Chair, Committee on Agriculture & Livestock

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Local Government Code section 143.014 authorizes a municipality to appoint additional assistant municipal police and fire chiefs (RQ-1130-GA)

Briefs requested by June 24, 2013

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

TRD-201302273
Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 5, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-1007

The Honorable Daynah Fallwell

Wilson County Attorney

1103 Fourth Street

Floresville, Texas 78114-2014

Re: Whether a county may regulate, as a subdivision, the partition of a tract of land in the unincorporated portion of the county under Local Government Code chapter 232 or Health and Safety Code chapter 121 (RQ-1103-GA)

S U M M A R Y

Under the facts presented, a county may regulate, as a subdivision, the partition of land for a residential development in the unincorporated portion of the county under chapter 232 of the Local Government Code

regardless of whether there has been a transfer of title to individual tracts.

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

TRD-201302280

Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 5, 2013

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

Pursuant to Texas Government Code §2001.034, the Texas Juvenile Justice Department (TJJD) adopts on an emergency basis new Chapter 355, concerning Non-Secure Correctional Facilities. New §§355.100, 355.204, 355.208, 355.212, 355.216, 355.300, 355.304, 355.312, 355.316, 355.320, 355.332, 355.336, 355.344, 355.348, 355.352, 355.360, 355.364, 355.368, 355.372, 355.376, 355.380, 355.400, 355.408, 355.412, 355.416, 355.420, 355.424, 355.428, 355.432, 355.436, 355.440, 355.444, 355.448, 355.452, 355.456, 355.480, 355.512, 355.516, 355.520, 355.524, 355.528, 355.532, 355.540, 355.544, 355.552, 355.600, 355.608, 355.612, 355.616, 355.620, 355.632, 355.636, 355.640, 355.644, 355.648, 355.652, 355.654, 355.656, 355.658, 355.664, 355.668, 355.676, 355.680, 355.800, 355.804, 355.808, 355.812, and 355.816 address definitions, applicability and general provisions, physical plant and fire safety, facility management and operations, resident health and safety, resident rights and programming, and restraints.

The new chapter establishes minimum standards for the operation of non-secure correctional facilities housing residents under the jurisdiction of a juvenile court. The emergency rules focus on aspects of facility operations that impact the safety, security, healthcare, and education of residents.

The agency finds that the absence of standards regarding safety, security, supervision, building and fire safety codes, healthcare, and education of residents in non-secure correctional facilities creates imminent peril to public safety and welfare.

SUBCHAPTER A. DEFINITIONS

37 TAC §355.100

This new section is adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.100. Definitions.

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

(1) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department for a single county or a multi-county judicial district.

(2) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of a resident, or family members of a resident.

(3) Date and Time of Admission--The date and time a juvenile was admitted into a non-secure correctional facility.

(4) Designee--The person authorized to perform a specific duty as assigned by the facility administrator.

(5) Discipline--Guidance that is constructive or educational in nature and is appropriate to the resident's age, development, situation, and severity of behavior.

(6) Facility Administrator--The individual designated by the chief administrative officer or governing board of the facility who has the ultimate responsibility for managing and operating the facility. This definition includes the certified juvenile supervision officer who is designated in writing as the acting facility administrator during the absence of the facility administrator.

(7) Facility Staff--All full-time, part-time, temporary, and seasonal staff, other than certified juvenile supervision officers, who are employed or contracted to perform facility-related duties.

(8) Governing Board--Any governmental unit as defined in §101.001 of the Texas Civil Practice and Remedies Code that operates a non-secure correctional facility, including but not limited to a juvenile board.

(9) Hazardous Material--Any substance that is explosive, flammable, combustible, poisonous, corrosive, irritating, or otherwise harmful and is likely to cause injury or death.

(10) Health Assessment--The process whereby the health status of an individual is evaluated, which may include questioning the patient regarding symptoms.

(11) Health Care Professional--A term that includes physicians, physician assistants, nurses, nurse practitioners, dentists, med-

ical assistants, emergency medical technicians, and others who, by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for patients.

(12) Health Service Authority--The agency, organization, entity, or individual responsible for consulting and collaborating with the facility administrator and/or the health services coordinator to ensure a coordinated and adequate health care system is available to residents of the facility.

(13) Housing Area--An area within the non-secure correctional facility that contains resident housing units.

(14) Housing Unit--A unit within the housing area that may be designed and constructed as either a single occupancy housing unit (SOHU) or a multiple occupancy housing unit (MOHU).

(15) Intensive Physical Activity--Rigorous physical activity that involves rhythmic, repetitive physical activities that use large muscle groups with an increase in heart rate and respiration. This does not include recreational team activities or activities related to the educational curriculum (i.e., physical education).

(16) Intra-Jurisdictional Custodial Transfer--The transfer of a resident from a pre-adjudication or post-adjudication secure facility into a non-secure correctional facility under the same administrative authority.

(17) Isolation--The segregation of a resident from other residents and the placement of the resident alone in an area for medical or protective purposes.

(18) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program administered or operated under the authority of the juvenile board.

(19) Juvenile Supervision Officer--A person whose primary responsibility and essential function is the supervision of juveniles in a juvenile justice facility or a juvenile justice program operated by or under contract with the governing board.

(20) Material Safety Data Sheet (MSDS)--A document prepared by the supplier or manufacturer of a product clearly stating its hazardous nature, ingredients, precautions to follow, health effects, and safe handling/storage information.

(21) Medical Treatment--Medical care, including diagnostic testing (e.g., x-rays, laboratory testing, etc.), performed or ordered by a physician or physician assistant or performed by a licensed nurse practitioner, emergency medical technician, paramedic, or licensed vocational nurse (LVN) according to their respective licensure.

(22) Mental Health Provider--An individual who is licensed or otherwise authorized to provide mental health services by one or more of the following licensing boards:

(A) Texas State Board of Examiners of Psychologists;

(B) Texas State Board of Examiners of Professional Counselors;

(C) Texas State Board of Examiners of Marriage and Family Therapists;

(D) Texas Department of State Health Services;

(E) Texas Medical Board; or

(F) Texas State Board of Social Worker Examiners.

(23) Mental Health Screening--A process that includes a series of questions that are designed to identify a resident who is at an increased risk of having mental health disorders that warrant attention and a professional review.

(24) Multiple-Occupancy Housing Unit (MOHU)--A housing unit designed and constructed for multiple-occupancy sleeping.

(25) Non-Program Hours--The time period when scheduled resident activity on the facility's premises has ceased for the day.

(26) Positive Screening--A scored result of a completed mental health screening instrument (i.e., MAYSI-2) recommending services requiring a primary service by a mental health provider as described on the MAYSI-2 reference card.

(27) Program Hours--The time period when the resident population has scheduled facility activities.

(28) Protective Isolation--The exclusion of a threatened resident from the group by placing the resident in an individual room that minimizes contact with the residents from a specific group.

(29) Qualified Mental Health Professional--An individual employed by the local mental health authority or an entity who contracts as a service provider with the local mental health authority who meets the guidelines of the Texas Department of State Health Services.

(30) Rated Capacity--The maximum number of beds available in a facility that were architecturally designed or redesigned as a housing unit.

(31) Resident--A juvenile who is placed in the non-secure correctional facility.

(32) Restriction--The separation of a resident from other residents for behavior modification and the placement of the resident alone for 90 minutes or less.

(33) Secondary Screening--A triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment and what type of intervention or assessment is needed.

(34) Separation--The segregation of a resident from program activities or other residents for 24 hours or less because of major rule violations.

(35) Single-Occupancy Housing Unit (SOHU)--A housing unit designed and constructed with separate and individual resident sleeping quarters.

(36) TJJD--The Texas Juvenile Justice Department.

(37) Volunteer--An individual who agrees to perform services without compensation and may have regular or periodic supervised contact with juveniles under the direction of the non-secure correctional facility.

(38) Youth-on-Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, or sexual performance as those terms are defined in subparagraphs (A) - (D) of this paragraph:

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with an object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons, including simulated or actual sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(E) A juvenile may not consent to the acts as defined in this paragraph under any circumstances. Consent may not be implied regardless of the age of the juvenile.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

TRD-201302244
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: June 3, 2013
Expiration date: September 30, 2013
For further information, please call: (512) 490-7014

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SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §§355.204, 355.208, 355.212, 355.216

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.204. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, an application for waiver or variance of any standard in this chapter may be submitted in accordance with §349.200 of this title.

§355.208. Authority to Operate Non-Secure Correctional Facility.

Pursuant to Texas Family Code Title 3, a non-secure correctional facility for juvenile offenders may only be operated by:

(1) a governmental unit in this state; or

(2) a private entity under a contract with a governmental unit in this state.

§355.212. Certification and Registration of Facility.

Before admitting residents, the governing board in the county where the facility is located, shall:

(1) certify the non-secure correctional facility is in compliance with §51.126 of the Texas Family Code;

(2) indicate the number of beds in the facility certification;

(3) register the facility with TJJD in compliance with §51.126 of the Texas Family Code; and

(4) post within a public area of the facility the current facility certification and TJJD's facility registration.

§355.216. Acceptance of Residents.

A non-secure correctional facility may only accept and admit a child, as that term is defined in §51.02(2) of the Texas Family Code, who is under the jurisdiction of the juvenile court.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

TRD-201302243
Brett Bray
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER C. PHYSICAL PLANT AND FIRE SAFETY

37 TAC §§355.300, 355.304, 355.312, 355.316, 355.320, 355.332, 355.336, 355.344, 355.348, 355.352, 355.360, 355.364, 355.368, 355.372, 355.376, 355.380

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.300. Building and Operational Codes.

(a) The facility shall conform to all applicable federal, state, and/or local ordinances and codes. Each facility shall maintain documentation of the annual inspections conducted by the governmental authority having jurisdiction.

(b) Each inspection shall result in a written report that contains at least the following information:

(1) the name of the governmental entity that conducted the inspection;

(2) the identification of any applicable code violations or infractions and the corresponding corrective action requirements;

(3) the name and title of the person conducting the inspection; and

(4) the date(s) of the inspection.

(c) Any deficiencies noted in the annual inspection report shall be immediately addressed with the corrective action documented by the facility administrator or designee. If corrective action cannot be made within three working days, the facility administrator shall develop and document a corrective action plan to rectify deficiencies.

§355.304. Alternate Power Source.

(a) The facility shall have at least one alternate source of electrical power that provides for the simultaneous operation of life safety systems including:

(1) emergency lighting;

(2) illuminated emergency exit lights and signs;

(3) emergency audible communication systems and equipment; and

(4) fire detection and alarm system.

(b) The alternate power source system shall be tested at least once every 15 calendar days to ensure the system is in working condition. Documentation shall be maintained and include at a minimum, test date, test results, and name and title of the individual completing the tests.

(c) The alternate power source system shall be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. Documentation shall be maintained and include at a minimum, inspection date, inspection results, and name and title of the individual completing the inspection. This inspection must be completed by a person with qualifications established through one of the following:

(1) work experience;

(2) relevant training;

(3) specialized licensure; or

(4) certification.

(d) A written corrective action plan shall be developed within 15 calendar days of any system malfunctions or maintenance needs that are identified during the testing and/or inspection of the alternate power source. Any immediate corrective actions taken shall be documented.

§355.312. Heating and Ventilation.

(a) The facility shall provide fully functioning heating, cooling, and ventilation systems adequate for the square footage of the facility.

(b) Alternate means of ventilation in the facility shall be maintained in case regular power is interrupted.

§355.316. Rated Capacity.

The population of the facility shall not exceed the rated capacity of the facility.

§355.320. Secure Storage of Restraint Devices.

If mechanical restraint devices are used, there shall be a location for secure storage of restraint devices and related security equipment. This equipment shall be readily accessible to authorized persons. Facility policies and procedures shall define authorized persons and list the types of authorized devices and related equipment.

§355.332. Single-Occupancy Housing Units--SOHU.

(a) SOHUs shall be constructed to contain no more than 24 beds in each housing unit.

(b) Individual resident sleeping quarters shall be utilized as single-occupancy only, and at no time may more than one resident be placed in an individual resident sleeping quarter.

(c) Individual resident sleeping quarters shall contain a bed above floor level.

§355.336. Multiple-Occupancy Housing Units--MOHU.

(a) MOHUs shall be designed to contain no more than 24 beds in each housing unit.

(b) MOHUs shall have one bed above floor level for every resident assigned to the unit.

(c) MOHUs shall contain residents of the same sex.

§355.344. Shower Facilities.

Residents shall have access to shower facilities with hot and cold running water within the non-secure correctional facility.

(1) Non-secure correctional facilities shall contain one operable shower for every eight beds.

(2) The facility shall have policies and procedures regarding residents' access to shower facilities and their supervision during the use of shower facilities.

§355.348. Toilet Facilities.

(a) Residents shall have access to toilet facilities within the non-secure correctional facility.

(b) Non-secure correctional facilities shall contain at least one operable toilet above floor level for every eight beds.

(c) Urinals may be substituted for up to one-half of the toilets in housing areas permanently designed as all-male units.

(d) The facility shall have policies and procedures regarding residents' access to toilet facilities and their supervision during the use of toilet facilities.

§355.352. Washbasins.

(a) Residents shall have access to washbasins within the non-secure correctional facility.

(b) Non-secure correctional facilities shall contain one operable washbasin for every 12 beds.

(c) All washbasins shall have hot and cold running water.

§355.360. Drinking Water.

(a) Residents shall have access to clean and fresh drinking water within the non-secure correctional facility.

(b) The facility shall have policies and procedures regarding residents' access to drinking water.

§355.364. Safety Codes.

(a) The facility shall conform to the provisions set forth in the Life Safety Code (i.e., National Fire Protection Association (NFPA) 101) and/or any applicable state and local fire safety codes. The Life Safety Code may be substituted with local government ordinances or codes only if the local ordinances or codes are specifically written to include building occupancy for detention and correctional usage.

(b) A formalized Life Safety Code/fire safety inspection shall be completed prior to the facility becoming operational.

(c) All subsequent Life Safety Code/fire safety inspections shall be conducted no later than the last day of the calendar month of the previous year's inspection.

(d) Each Life Safety Code/fire safety inspection shall result in a written report that contains at least the following information:

(1) the identification of the specific code(s) used to complete the inspection. The code(s) used must be the Life Safety Code or the applicable state, municipal, or county-specific fire code adopted by the jurisdiction;

(2) the name of the governmental entity that conducted the inspection;

(3) the identification of any applicable code violations or infractions and the corresponding corrective action requirements;

(4) the name and title of the person conducting the inspection; and

(5) the date(s) of the inspection.

(e) Any deficiencies noted in the annual inspection report shall be immediately addressed by the facility administrator or designee. The facility administrator shall develop and document a corrective action plan to rectify all deficiencies.

§355.368. Fire Safety Plan.

(a) The facility shall have in effect and available to all personnel written copies of a fire safety plan for the protection of all persons in the event of a fire for their evacuation to areas of refuge and for their evacuation from the building, if necessary.

(b) The fire safety plan shall be coordinated with and reviewed by the fire department whose jurisdiction includes the facility. The coordination and review efforts required in this standard shall be validated by written documentation prepared or attested to by a representative of the applicable fire department.

(c) The written fire safety plan shall require that all employees be instructed on the following:

(1) proper disposal of combustible refuse;

(2) prompt evacuation of the facility; and

(3) procedures for the use and control of flammable, toxic, and caustic materials.

§355.372. Fire Drills.

(a) Required Fire Drills. Fire drills shall be conducted on all shifts at least every 90 calendar days. The facility shall maintain documentation of the date, time, and name of the staff conducting each fire drill.

(b) Participation. All staff on duty in the facility shall participate in the fire drills.

(c) Exits. Facility exits shall be clear of obstruction and properly marked for evacuation in the event of fire or emergencies.

(d) Evacuation Plans. Facility emergency evacuation plans shall be posted in all common and housing areas.

§355.376. Non-Fire Emergency Preparedness Plan.

The facility shall have a written emergency preparedness plan that includes, but is not limited to, severe weather, natural disasters, disturbances or riots, national security issues, and medical emergencies. The plan shall also address:

(1) the identification of key personnel and their specific responsibilities during an emergency or disaster situation;

(2) agreements with other agencies or departments; and

(3) transportation to pre-determined evacuation sites.

§355.380. Hazardous Materials.

(a) The facility shall maintain an inventory and a copy of the Material Safety Data Sheet (MSDS) for all hazardous materials located in the facility.

(b) Materials manufactured for cleaning purposes or those used in the training process of a vocational training program or another program may be used by residents under the general supervision of a qualified facility staff member. The resident must be provided instruction on the use of the hazardous material and the proper equipment as prescribed by the MSDS. Facility policies and procedures shall detail the requirements and restrictions of materials described in this standard.

(c) Any use of hazardous materials shall be used according to the manufacturer's instructions.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

TRD-201302245
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: June 3, 2013
Expiration date: September 30, 2013
For further information, please call: (512) 490-7014

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SUBCHAPTER D. FACILITY MANAGEMENT AND OPERATIONS

37 TAC §§355.400, 355.408, 355.412, 355.416, 355.420, 355.424, 355.428, 355.432, 355.436, 355.440, 355.444, 355.448, 355.452, 355.456, 355.480

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.400. Policy, Procedure, and Practice.

The facility shall have written policies and procedures governing its operation. The policies, procedures, and practices of the facility shall include, at a minimum:

(1) a policy in the following areas strictly prohibiting:

(A) physical, sexual or emotional abuse, neglect, or exploitation of a resident by any individual having contact with a resident of the facility;

(B) youth-on-youth sexual conduct between residents;

(C) violations of the juvenile supervision officer code of ethics as outlined in Chapter 345 of this title. For purposes of this chapter, the code of ethics in Chapter 345 applies to all direct care personnel;

(D) violations of any professional code of ethics or conduct by any individual providing services to or having contact with residents of the facility; and

(2) a zero-tolerance policy and practice regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provides for administrative and/or criminal disciplinary sanctions.

§355.408. Designation and Qualifications of Facility Administrator.

(a) The chief administrative officer, the governing board of the facility, or a designee shall appoint a single facility administrator for each non-secure correctional facility. The chief administrative officer may be the facility administrator. Documentation verifying the designation shall be maintained.

(b) The facility administrator shall:

(1) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(2) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by TJJD; or

(B) one year of experience in full-time case work, counseling, or community or group work in a social service, community corrections, or juvenile agency that deals with offenders or disadvantaged persons. TJJD determines the kind of experience necessary to meet this requirement; and

(3) maintain an active TJJD certification as a juvenile supervision officer.

(c) Documentation of the facility administrator's qualifications as detailed in this standard shall be maintained in the personnel file.

§355.412. Duties of Facility Administrator.

(a) The facility administrator shall be responsible for the daily operations of the facility and shall maintain an office on the premises of the facility.

(b) The facility administrator shall designate an individual who is a certified juvenile supervision officer to be in charge during his or her absence from the facility.

(c) The facility administrator shall develop, implement, and maintain a policy and procedure manual for the facility and shall ensure the daily facility practice conforms to the policies and procedures detailed in the manual.

(d) The facility administrator shall review the facility's policy and procedure manual at least once each year, no later than the last day of the calendar month of the previous year's review, and maintain documentation of this review.

(e) The facility administrator shall make readily accessible the written policies and procedures manual to all staff. The facility administrator shall ensure:

(1) Documentation of acknowledgement of receipt of the policies and procedures by all staff shall be maintained in the staff personnel or training file.

(2) All changes or modifications to the policies and procedures manual shall be made available to all staff in a timely manner. Documentation of receipt by all staff shall be maintained.

(f) The facility administrator shall ensure that all staff, including contract, temporary, seasonal or substitute employees, shall receive orientation training prior to performing the duties assigned to them.

(1) Documentation of staff orientation training and agendas shall be maintained in the personnel file or training file. At a minimum, documentation shall include the staff name, title, date of training, and training topics.

(2) Orientation training, at a minimum, shall be documented as required by TJJD and include the following topics:

(A) safety and security procedures, including but not limited to, fire drills and non-fire emergency preparedness plan;

(B) child abuse, neglect, and exploitation identification and reporting as required by Chapter 358 of this title;

(C) incident reports;

(D) resident orientation handbook;

(E) behavior management system;

(F) transporting residents outside the facility;

(G) crisis intervention;

(H) distribution of medication;

(I) sexual harassment;

(J) restraint policy;

(K) resident grievance procedures; and

(L) compliance with training requirements set forth in Chapter 344 of this title.

(g) The facility administrator or designee shall ensure that current personnel records are maintained for each employee, which shall include:

(1) proof of age;

(2) criminal history searches conducted as required by Chapter 344 of this title;

(3) the completed application for employment;

(4) training records;

(5) applicable personnel actions;

(6) documentation of the employee's education transcripts; and

(7) applicable documentation verifying TJJD certification.

(h) The facility administrator or designee shall ensure that current records are maintained for each contract service provider, which shall include:

(1) a copy of the contract between the service provider and the facility;

(2) criminal history searches required by Chapter 344 of this title; and

(3) documentation verifying the service provider's licensure, if applicable.

(i) The facility administrator or chief administrative officer of a private entity under contract with a governmental unit in this state shall provide the presiding officer of the juvenile board with jurisdiction over the facility with periodic updates on the operation of the facility. Documentation of updates shall be maintained. The following information shall be provided at least every 90 calendar days:

(1) facility population/capacity reports;

(2) number of serious incidents by category that occurred in the facility;

(3) number of resident restraints by type (i.e., personal and mechanical);

(4) number of injuries to residents requiring medical treatment; and

(5) number of injuries to staff requiring medical treatment.

(j) The facility administrator or chief administrative officer shall ensure the accurate and timely submission of statistical data to TJJD in an electronic format or other format as requested by TJJD.

(k) The facility administrator or chief administrative officer shall ensure that all individuals employed by the facility or who provide contracted services and have contact with residents are subjected to all required criminal history background checks as required by Chapter 344 of this title.

§355.416. Criminal History Searches.

All staff, including contract staff, volunteers, and interns, shall have criminal history searches in accordance with Chapter 344 of this title.

§355.420. Volunteers and Interns.

(a) Facilities utilizing a volunteer or internship program shall have written policies and procedures that contain the following components:

(1) a description of the authority, responsibility, and accountability of volunteers and interns who work with the department;

(2) the selection and termination criteria, including disqualification based on specified criminal history;

(3) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(4) a requirement that volunteers and interns meet minimum professional requirements, when applicable; and

(5) documentation requirements detailing the tracking of volunteers and interns.

(b) Facilities shall have a written volunteer and intern registry, log or other documentation that details all dates and times a volunteer or intern is present on the premises of the facility as well as the purpose of his or her visit.

§355.424. Serious Incidents.

All non-secure correctional facilities shall adhere to the requirements set forth in Chapter 358 of this title regarding serious incidents.

§355.428. Abuse, Neglect and Exploitation.

All non-secure correctional facilities shall adhere to requirements set forth in Chapter 358 of this title regarding abuse, neglect and exploitation.

§355.432. Weapons.

(a) The facility shall have written policies and procedures that prohibit staff, other than a law enforcement officer acting in the scope of his or her official duty, from the possession of a weapon as defined by §46.01 of the Texas Penal Code on the facility premises or at a facility-sponsored event.

(b) The facility's policies and procedures required in subsection (a) of this section shall prohibit a juvenile probation officer authorized to carry a firearm from entering the non-secure facility with a weapon.

§355.436. Safety and Security.

(a) Security Plan. The facility shall have a written plan that addresses security:

(1) within the facility; and

(2) on and off facility premises.

(b) Transportation. The written facility security plan shall address the use of motor vehicles to transport residents, including the following:

(1) methods of transportation authorized;

(2) safety and supervision;

(3) authorized transport personnel;

(4) emergency procedures;

(5) the requirement of auto liability insurance when transporting in personal vehicles; and

(6) circumstances under which residents will be allowed to drive a personal vehicle.

(c) Internal Security. The security plan shall also address the facility's internal security with regard to the following:

(1) continued operations in the event of a work stoppage;

(2) key control;

(3) control of the use of:

(A) tools;

(B) medical equipment; and

(C) kitchen tools;

(4) provisions to prevent firearms from entering the facility; and

(5) provisions for coordination with law enforcement authorities in the case of situations requiring assistance from city, county, or state law enforcement agencies.

(d) Documentation of Special Incidents.

(1) The facility shall have policies and procedures that include definitions and reporting requirements for special incidents.

(2) The facility administrator or designee shall ensure the proper documentation of all special incidents where the health and safety of residents and/or staff were or could have been jeopardized. Documentation of all special incidents shall be maintained.

(3) A copy of the report shall be placed in the permanent file of any resident(s) involved in the incident.

§355.440. Searches.

(a) The facility shall have written policies and procedures that address the following elements regarding resident searches:

(1) when a search is appropriate and/or required;

(2) who is authorized to conduct the search;

(3) what types of searches are permissible;

(4) how the searches will be conducted;

(5) what to do when contraband is found; and

(6) searches being conducted only by staff of the same gender as the resident.

(b) Searches used during the intake process shall be detailed in the facility's policies and procedures. Residents shall be subjected to only the following searches:

(1) a pat down or frisk search as necessary for facility safety and security;

(2) an oral cavity search to prevent concealment of contraband and to ensure the proper administration of medication;

(3) a strip search in which the resident is required to surrender his or her clothing based on the reasonable belief the resident possesses contraband or the reasonable belief the resident presents a threat to the facility's safety and security;

(A) a strip search shall be limited to a visual observation of the resident and shall not involve the physical touching of a resident;

(B) a strip search shall be performed in an area that ensures the privacy and dignity of the resident; and

(C) a strip search shall be conducted by a staff member of the same gender as the resident being searched;

(4) an anal or genital body cavity search only if there is probable cause to believe that the resident is concealing contraband;

(A) an anal or genital body cavity search shall be conducted only by a physician. The physician shall be of the same gender as the resident, if available;

(B) all anal and genital body cavity searches shall be conducted in an office or room designated for medical procedures; and

(C) all anal and genital body cavity searches shall be documented with the documentation being maintained in the resident's file.

(c) During searches, the residents shall not be touched any more than necessary to conduct a comprehensive search. Documentation of this prohibition shall be detailed in the policies and procedures.

(d) Every effort shall be made to prevent embarrassment or humiliation of the resident. Documentation of this prohibition shall be detailed in the policies and procedures.

§355.444. Intake Packet.

The facility shall maintain an intake packet on each youth admitted to the facility.

§355.448. Behavioral Screening.

(a) Before being assigned to housing, the juvenile shall be screened for potential vulnerabilities or tendencies of acting out with sexually aggressive or assaultive behavior. Documentation of the screening shall be maintained. Housing assignments shall be made accordingly.

(b) The behavioral screening shall take into consideration and address the following information:

(1) age;

(2) current charge(s) and offense history;

(3) physical size/stature;

(4) current state of mind;

(5) sexual orientation;

(6) prior sexual victimization or abuse;

(7) level of emotional and cognitive development;

(8) physical disabilities;

(9) mental disabilities, including emotional, intellectual and developmental disabilities; and

(10) any other pertinent information.

§355.452. Classification Plan.

The facility shall have a written classification plan that determines how residents are grouped in housing units. Residents shall be classified for grouping by, at a minimum:

(1) age;

(2) sex;

(3) offense;

(4) behavior; and

(5) any other special considerations including a resident's potential vulnerabilities for sexual abuse that are discovered during the resident's behavioral screening required in §355.448 of this chapter.

§355.456. Supervision.

(a) Effective Date. This section takes effect on June 15, 2013.

(b) Ratios. Ratios of juvenile supervision officers to residents on facility premises shall adhere to the requirements set forth in this standard and be documented in policies and procedures.

(1) During program hours, the ratio shall be at least one juvenile supervision officer to every 12 residents.

(2) During non-program hours, the ratio shall be at least one juvenile supervision officer to every 24 residents.

(c) Same-Gender Supervision Requirement.

(1) Policies and practice shall ensure at least one juvenile supervision officer or facility staff member of each gender represented in the resident population is on duty and available to the residents on every shift.

(2) Cross-gender supervision shall be prohibited during showers, physical searches, pat downs, disrobing of suicidal residents, or other times in which personal hygiene practices or needs would require the presence of a staff member of the same gender. However, if the resident is behind a closed, windowless door to shower or care for other personal hygiene needs, a same-gender staff member is not required. The requirements of this standard shall be detailed in the facility's policies and procedures.

(d) Level of Supervision.

(1) Program Hours.

(A) The facility shall have written policies and procedures detailing the supervision requirements while residents are away from the facility premises.

(B) Policies and practice shall ensure while residents are located in the facility during program hours, a juvenile supervision officer shall provide constant physical presence to all residents.

(2) Small Groups. Residents may be supervised by a qualified individual when the individual is working with the residents in a capacity that relates to the individual's:

(A) work experience;

(B) relevant training;

(C) specialized licensure; or

(D) certification.

(3) Non-Program Hours.

(A) A juvenile supervision officer shall visually observe and document each resident at random intervals not to exceed 15 minutes in a SOHU.

(B) A juvenile supervision officer shall have constant visual observation of residents in a MOHU and shall document general observations of dorm activity at intervals not to exceed 30 minutes. If the physical configuration of the MOHU does not allow for constant visual observation of all residents, a juvenile supervision officer shall visually observe and document each resident at random intervals not to exceed 15 minutes.

(4) A juvenile supervision officer shall document each visual observation made of residents. The documentation shall include the time of the observation and generally describe the residents' behavior.

§355.480. Release Procedures.

(a) Prior to the release of a resident from the facility, the authorized officer shall:

(1) verify the release authorization documents;

(2) verify the identity of the person receiving custody;

(3) secure a signed release by the individual receiving the resident's personal property;

(4) provide information to the person receiving custody regarding:

(A) all medication prescribed while the resident was in the facility that the resident is currently taking and the name and contact information of the prescribing physician;

(B) any pending medical, mental health, or dental appointments; and

(C) any present concerns regarding the resident; and

(5) secure a receipt signed by the person receiving custody.

(b) Documentation of the requirements in this standard shall be maintained in the resident's file.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

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SUBCHAPTER E. RESIDENT HEALTH AND SAFETY

37 TAC §§355.512, 355.516, 355.520, 355.524, 355.528, 355.532, 355.540, 355.544, 355.552

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.512. Mental Health Screening and Referral.

(a) Screening. Unless the exception in subsection (b) of this section applies, a mental health screening instrument approved by TJJD shall be administered to each resident that is admitted into the non-secure correctional facility within 24 hours of admission. Documentation of administration shall be maintained to include, at a minimum, the date and time administered and the name and title of the person administering the screening.

(b) Exception. A mental health screening is not required if the referral documents that arrive with the resident contain a TJJD-approved mental health screening instrument completed within the previous 60 days or a psychological evaluation completed within the previous 365 days. However, if the resident experienced a significant event (such as adjudication or removal from his/her home county) after the mental health screening was conducted, a new screening is required within 24 hours of admission.

(c) Referral. A resident who scores a positive screening on the screening instrument shall be:

(1) administered a secondary screening immediately to assist in clarifying the resident's need for mental health intervention;

(A) If the secondary screening confirms the positive screening and that mental health intervention is warranted, then a referral shall be made to a mental health provider or licensed physician within two hours from the completion of the initial mental health screening.

(B) If the secondary screening substantiates that the initial positive screening was false, then no further mental health intervention is required; or

(2) referred to a qualified mental health professional by the end of the following workday for consultation to determine if further mental health intervention is warranted.

(A) The facility shall maintain documentation of the consultation in the resident's file.

(B) If the qualified mental health professional recommends further mental health intervention is needed, then the resident must be referred to a mental health provider or licensed physician within 48 hours.

(d) Documentation of secondary screening and referrals specific to the juvenile's positive screening on the screening instrument shall be maintained and forwarded to the resident's supervising juvenile probation officer.

(e) Documentation of referrals, completed assessments, and evaluations, including dates and times, shall be retained in the resident's file and forwarded to the resident's supervising juvenile probation officer.

§355.516. Health Screening and Assessment.

(a) Health Screening. Except as provided in subsection (f) of this section, a health screening shall be conducted on each resident within two hours of admission by either a health care professional or an individual who has received specific training on administering the facility's health screening. The health screening instrument shall include:

(1) mental health problems;

(2) suicide risk assessment in accordance with the facility's suicide prevention plan;

(3) current state of health including:

(A) allergies;

(B) tuberculosis;

(C) other chronic conditions;

(D) sexually transmitted diseases;

(E) other infectious diseases;

(F) history of gynecological problems or pregnancies; and

(G) recent injuries at or near the time of admission;

(4) current use of medication including type, dosage, and prescribing physician;

(5) visual observation of teeth and gums and notation of any obvious dental problems;

(6) vision problems;

(7) drug and alcohol use;

(8) physical or developmental disabilities;

(9) evidence of physical trauma;

(10) a determination of the need for medical detoxification from alcohol or other substances or mental health services; and

(11) the resident's weight.

(b) Referral for Assessment. If the health screening indicates that a resident is in need of further medical evaluation, the resident shall be referred to a health care professional for further assessment within 24 hours, excluding holidays and weekends, from the date and time of the completed screening.

(c) Mandatory Health Assessment. If a resident has not had a health assessment by a health care professional within the 12 months immediately preceding admission into the facility, the resident shall be given a health assessment by a health care professional within 30 calendar days after admission into the facility.

(d) Results of Screening and Assessment. The results of the health screening and health assessment shall be communicated to appropriate staff.

(e) Contagious or Infectious Disease. Any finding of the health screening that indicates a significant potential health risk to the staff or residents from a contagious or infectious disease shall be immediately reported to the facility administrator, and the affected resident shall be placed in medical isolation until proper medical clearance is obtained.

(f) Intra-Jurisdictional Custodial Transfer. A health screening is not required for intra-jurisdictional custodial transfer of residents if the non-secure facility receiving the resident is located within the same premises as the sending facility. If the two facilities are not located within the same premises, the only items required for the health screening are items enumerated in subsection (a)(2) and (9) of this section.

§355.520. Suicide Prevention Plan.

(a) Plan. The facility shall have a written suicide prevention plan developed in consultation with a mental health provider that, at a minimum, addresses the following components:

(1) definitions of moderate and high risk for suicidal behavior;

(2) a screening methodology to assess and assign a resident's risk of suicide upon admission into the facility, and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior. The screening methodology shall include specific provisions regarding the assessment of risk when a resident refuses or is unable to cooperate with the screening process;

(3) level of supervision for residents identified as a risk for suicidal behavior;

(4) communication protocols among facility staff, mental health providers, the resident's juvenile probation officer, the resident and the resident's parent, legal guardian, or custodian, including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(5) policies and procedures for intervening in suicide attempts;

(6) reports of resident suicides and attempted suicides, in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(7) staff training on the contents and implementation of the suicide prevention plan;

(8) temporary housing of residents assigned to moderate or high risk for suicidal behavior, including the removal from the resident's presence any dangerous objects which may include clothing and bedding items; and

(9) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(b) Implementation. The facility shall implement the suicide prevention plan. All residents shall be screened and assessed for suicide risk upon admission and as necessary thereafter.

(c) Documentation. The facility shall maintain documentation of the suicide prevention plan, the consultation with a mental health provider in developing the plan, and the training of all staff on the contents of the plan.

§355.524. Transfer, Release, and Referral of High Risk Suicidal Youth.

(a) If a resident is classified as high risk for suicidal behavior, the facility shall immediately notify the sending agency for transfer or release. Documentation of this notification shall be maintained including the date, time, name, and jurisdiction of the person notified.

(b) If immediate transfer or release is not possible, the facility shall refer the resident classified as high risk for suicidal behavior to a mental health provider or mental health care facility for further assessment or intervention. The referral shall be made within two hours of classification. The facility shall maintain written documentation of the referral that includes:

(1) the name and title of the mental health provider or mental health care facility notified;

(2) the date and time of the referral;

(3) the method of referral; and

(4) a brief description of the response provided by the mental health provider or the responsive document from the mental health provider.

§355.528. Supervision of High Risk Suicidal Youth.

(a) Supervision. Residents classified as high risk for suicidal behavior who are awaiting an assessment by a mental health provider or transfer or release or as described in §355.524(b) of this chapter shall be:

(1) provided constant, uninterrupted supervision by a certified juvenile probation officer or certified juvenile supervision officer; and

(2) the supervising officer shall document his or her personal observations of the high-risk resident at intervals not to exceed 30 minutes.

(b) Required Documentation. The following documentation shall be maintained for high-risk suicidal residents:

(1) the date and time the resident was classified as high risk for suicidal behavior;

(2) name and title of the person who classified the resident as high risk for suicidal behavior;

(3) a description of the resident's behavior and/or factors that led to the resident's classification as high risk for suicidal behavior;

(4) name of the certified juvenile probation officer or certified juvenile supervision officer providing supervision of the resident; and

(5) the location of the resident's supervision.

§355.532. Health Care Services.

(a) Health Service Plan. The facility shall have a written health service plan developed in consultation with the designated health service authority. The health service plan shall establish the facility's health care delivery system for all residents. Documentation of the consultation for the development of the health service plan shall be maintained.

(b) Review of Health Service Plan. The health service plan shall be reviewed at least every 24 months in consultation with the health service authority. Documentation of this review, including the date and time of the review and the name of the reviewing health service authority, shall be maintained.

§355.540. Medical Treatment for Victims of Sexual Abuse.

Testing for sexually transmitted diseases, including HIV/AIDS, shall be made available to a resident who, at the conclusion of an internal investigation or TJJD investigation of abuse, neglect, or exploitation, is found to have been abused, neglected, or exploited in a manner by which any physical injuries may have occurred or any sexually transmitted disease may have been contracted. The cost of the testing services and any subsequent medical treatment services shall not be assessed to the resident or the resident's family. The requirements of this standard shall be detailed in the facility's policies and procedures.

§355.544. Behavioral Health Care Services for Victims of Sexual Abuse.

A mental health provider shall assess any resident who, at the conclusion of an internal investigation or TJJD investigation of abuse, neglect, or exploitation that occurred in the facility, is found to have been the victim of a sexual assault. The mental health provider shall assess the need for crisis intervention counseling and any subsequent long-term, follow-up, or counseling services. The cost of the assessment and any subsequent counseling services shall not be assessed to the resident or the resident's family. The requirements of this standard shall be detailed in the facility's policies and procedures.

§355.552. First-Aid Kits.

(a) Each facility shall have a first-aid kit available to the facility staff and shall be:

(1) clearly labeled;

(2) kept in a clean and sanitary condition;

(3) easily accessible to all staff;

(4) stored in a designated location known to all employees; and

(5) kept out of the reach of the residents.

(b) Each first-aid kit shall contain the following supplies:

(1) a guide to first aid and emergency care;

(2) adhesive tape;

(3) antiseptic solution or wipes;

(4) cotton balls;

(5) multi-size adhesive bandages;

(6) scissors;

(7) sterile gauze pads;

(8) thermometer;

(9) tweezers; and

(10) waterproof, disposable gloves.

(c) The first-aid supplies shall not be expired.

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

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SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.600, 355.608, 355.612, 355.616, 355.620, 355.632, 355.636, 355.640, 355.644, 355.648, 355.652, 355.654, 355.656, 355.658, 355.664, 355.668, 355.676, 355.680

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.600. Pre-Admission Assessment.

Each facility shall have written policies and procedures prohibiting the admission of juveniles who are in need of emergency medical care due to injury, illness, intoxication, or chemical impairment or who are in need of emergency mental health services. Subsequent admission into the facility for juveniles in need of emergency medical or mental health services is contingent upon written medical clearance provided by a health care or mental health provider.

§355.608. Protective Isolation.

(a) Protective isolation may be ordered when a resident is physically threatened by a resident or a group of residents and it is approved in writing by the facility administrator or designee. Documentation of the order and approval shall be maintained.

(b) A resident in protective isolation shall be in the least restrictive setting possible, allowing as much program time as possible while maintaining order and safety.

(c) While in protective isolation, a juvenile supervision officer shall observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(d) If the protective isolation of a resident exceeds 24 hours, the facility administrator or designee shall immediately conduct a documented review of the circumstances surrounding the level of threat faced by the resident and make a determination as to whether other less restrictive protective measures are appropriate and available. If continued protective isolation is approved, the facility administrator or designee shall ensure that the formalized written review document includes an alternative service delivery plan to ensure the isolated resident is afforded all required program services during his/her period of protective isolation.

§355.612. Restriction and Separation Prohibition.

Policies and practice shall ensure residents removed from facility programming or activities for disciplinary reasons shall not be placed in a locked area or room.

§355.616. Discrimination.

Policies and practice shall ensure residents shall not be subjected to discrimination based on race, religion, national origin, sex, sexual orientation, gender identity, or disability.

§355.620. Resident Grievance and Appeals Process.

(a) Grievance Process. Written policies and procedures, as well as actual practices, shall demonstrate that there is a formalized grievance process to address residents' complaints about their treatment and facility services. At a minimum, the formalized grievance process shall include the following policy, procedural, and practice elements:

(1) The residents' ability to submit a grievance and have full access to the process;

(2) A written response and resolution to all grievances no later than 10 calendar days from the date the grievance is received by staff;

(3) Confidentiality of grievance without fear of reprisal;

(4) The resident's ability to participate in the resolution of a grievance, including the use of an intermediary and the ability to request witnesses;

(5) Periodic formal reviews of the grievance process and dispositions by administrative-level staff;

(6) A tracking system and grievance log that accounts for all grievances submitted; and

(7) Post-release forwarding of a resident's unresolved grievance to the facility administrator or designee to determine if any action is needed.

(b) Grievance Appeals. A resident may appeal a grievance resolution. The facility shall have written policies and procedures that include appeal provisions. The provisions shall include at least the following:

(1) The resident shall have at least one level of appeal.

(2) The resident shall have the ability to appeal to a supervisory or higher-level staff member who is not named in the grievance and who did not provide the initial grievance resolution.

(4) A written response and resolution shall be provided to the resident within ten calendar days after the resident's appeal request.

(5) A copy of the final disposition shall be retained in the resident's file.

§355.632. Legal Correspondence.

Policies and practice shall ensure residents are furnished adequate postage for legal correspondence during their stay in the facility.

§355.636. Personal Hygiene.

(a) Policies and practice shall ensure residents are given appropriate instruction on personal and oral hygiene and shall be provided necessary articles to maintain proper personal cleanliness.

(b) Policies and practice shall ensure residents are provided the opportunity to shower daily and after participating in strenuous exercise.

§355.640. Bedding.

(a) Policies and practice shall ensure each resident is provided clean and suitable bedding, including at least two sheets or blankets, a pillow and pillowcase, and a mattress. Mattresses with an integrated pillow may be substituted for a separate pillow and a pillowcase.

(b) Policies and practice shall ensure clean bed linens are issued at least every seven calendar days.

§355.644. Clothing.

(a) Policies and practice shall ensure residents have access to clean and appropriate clothing upon admission into the facility.

(b) Policies and practice shall ensure residents have clean undergarments and socks daily and other clean clothing at least twice per week.

(c) Policies and practice shall ensure climate-appropriate clothing is provided to all residents in the facility for any outdoor programming or activities.

§355.648. Daily Meal Schedule.

(a) Three meals shall be provided daily to each resident in the facility.

(b) At least two of the meals shall be hot.

(c) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.

(d) Residents shall be allowed no less than ten minutes to eat once they have received their food.

§355.652. Menu Plans.

The facility shall develop and follow daily written menu plans. Menu plans shall be reviewed and approved at least once each year, no later than the last day of the calendar month of the previous year's approval. The review and approval shall be conducted by a licensed or provisionally licensed dietician to ensure that the menu plans meet or exceed the requirements of the United States Department of Agriculture (USDA). Documentation of the review shall be maintained.

§355.654. Nutritional Requirements.

Menus shall contain a variety of foods that meet the dietary requirements of the United States Department of Agriculture (USDA) and shall be documented.

§355.656. On-Site Food Preparation.

A facility that prepares food on-site shall maintain a valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services.

§355.658. Off-Site Food Preparation.

A facility that receives food from an off-site source shall maintain a copy of the source's valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services. The transfer of such food to the facility shall be conducted in a manner to prevent contamination or adulteration.

§355.664. Educational Program.

If the educational program is on the facility premises, the facility administrator shall ensure the following:

(1) all residents are required to participate. The educational program provided shall be administered in accordance with the Texas Education Code (TEC);

(2) the education provider has access to residents so that the educational program is afforded to all residents, in accordance with the TEC;

(3) residents shall be provided coursework that is aligned with the Texas Essential Knowledge and Skills (TEKS), in accordance with the TEC;

(4) the educational program provides for at least 180 days of instruction unless a waiver has been granted by the Texas Education Agency (TEA) for fewer days or the number of educational days coincides with the local school district calendar;

(5) educational space is adequate to meet the instructional requirements for each resident for educational services provided on-site; and

(6) all educational staff shall receive a facility orientation prior to performing instructional duties at the facility. Orientation shall be documented and include:

(A) security and safety procedures;

(B) emergency procedures;

(C) behavior management system and prohibited sanctions; and

(D) reporting abuse, neglect, and exploitation.

§355.668. Special Education.

(a) The facility administrator, through a cooperative effort with the Local Education Agency (LEA), shall ensure that residents with disabilities are provided a free and appropriate public education as determined by the Admission, Review, and Dismissal (ARD) Committee in order to meet the individual resident's educational needs as defined by federal and state laws.

(b) The facility administrator, through a cooperative effort with the LEA, shall ensure that residents with disabilities have available an instructional day commensurate with that of residents without disabilities, in accordance with requirements contained in 19 Texas Administrative Code §89.1075(d).

(c) The facility administrator or designee shall send notification of a resident placement in a non-secure correctional facility to the LEA as required by §29.012 of the Texas Education Code and shall retain documentation of this notice.

§355.676. Intensive Physical Activity.

(a) Facilities shall have written authorization from the governing board prior to using an intensive physical activity component.

(b) A resident shall not be permitted to participate in intensive physical activity without a copy of a health assessment performed by a licensed physician, licensed physician assistant, registered nurse, or doctor of chiropractic stating the resident has no physical limitations or conditions that would prohibit participation.

(c) A facility that has an intensive physical activity component shall develop written policies and procedures regarding extreme weather conditions that shall address the following:

(1) gradual acclimatization to hot weather;

(2) resident clothing for the various weather conditions; and

(3) temperatures and weather conditions in which activity outside is not allowed.

(d) Policies and practice shall ensure that during the intensive physical activity period, the facility provides residents with a water break every 30 minutes.

(e) With the exception of certified physical education teachers, staff who participate in the administration of intensive physical activity shall be certified juvenile supervision officers.

(f) The facility shall have written policies and procedures, including guidelines, parameters, and limitations, on the types of physical activity that may be used for discipline or refocusing purposes (e.g., physical activities used to discipline for non-compliant behavior or as a substitute for write-ups or separations).

§355.680. Work by Residents.

(a) Repetitive, purposeless, or degrading make-work is prohibited.

(b) A resident's work assignments shall be excused or temporarily suspended if medically contra-indicated.

(c) Residents shall be provided with the necessary supervision, appropriate tools, cleaning implements, and clothing to safely and effectively complete their assignments.

(d) Residents shall not perform personal services for staff.

(e) Residents shall not perform any work that is unsafe or poses a known risk to the health and safety of the residents.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

TRD-201302248
Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: June 3, 2013
Expiration date: September 30, 2013
For further information, please call: (512) 490-7014

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SUBCHAPTER G. RESTRAINTS

37 TAC §§355.800, 355.804, 355.808, 355.812, 355.816

These new sections are adopted under Human Resources Code §221.002, which requires TJJD to establish reasonable rules that provide minimum standards for non-secure correctional facilities operated by or under contract with a governmental unit.

§355.800. Restraint Definitions.

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

(1) Approved Mechanical Restraint Devices--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. TJJD-approved mechanical restraint devices are limited to the following for non-secure correctional facilities:

(A) Ankle Cuffs--Metal, cloth, or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms, or legs; and

(D) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body.

(2) Approved Personal Restraint Technique--A professionally trained, curriculum-based, and competency-based restraint tech-

nique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The personal restraint technique shall be approved for use by TJJD.

(3) Chemical Restraint--The application of a chemical agent on a resident or residents.

(4) Mechanical Restraint--The application of an approved mechanical restraint device that restricts or aids in the restriction of the movement of the whole body or a portion of an individual's body to control physical activity.

(5) Non-Ambulatory Mechanical Restraint--A method of prohibiting a resident's ability to stand upright and walk with the use of a combination of approved mechanical restraint devices, cuffing techniques, and the subject's body positioning. The four-point restraint and a restraint chair are examples of non-ambulatory mechanical restraints.

(6) Personal Restraint--The application of physical force alone, restricting the free movement of the whole body or a portion of an individual's body to control physical activity.

(7) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a personal restraint.

(8) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered approved mechanical restraint devices.

(9) Restraint--Application of an approved personal restraint technique or an approved mechanical restraint device to an individual to restrict the individual's freedom of movement or to modify the individual's behavior.

§355.804. Restraint Requirements.

Facilities shall have policies and procedures detailing the restraint requirements in this standard. The use of restraints shall be governed by the following criteria:

(1) Restraints shall only be used by juvenile supervision officers or staff certified in the use of the approved personal restraint technique and trained in the use of applicable mechanical restraint devices.

(2) Prior to participating in any restraint, juvenile supervision officers and staff shall be trained in the use of the non-secure correctional facility's specific verbal de-escalation policies, procedures, and practices.

(3) Restraints shall be used only in instances of imminent threat of self-injury, injury to others, or serious property damage.

(4) Restraints shall be used only as a last resort.

(5) Only the amount of force and type of restraint necessary to control the situation shall be used.

(6) Restraints shall be implemented in such a way as to protect the health and safety of the resident and others.

(7) Restraints shall be terminated as soon as the resident's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage has subsided.

(8) Restraints shall be administered in a manner specific to or consistent with the approved personal restraint technique adopted by the facility.

(9) Staff authorized to use the approved personal restraint technique and juvenile supervision officers shall be re-trained in the approved personal restraint technique at least every 365 calendar days. Documentation of the training shall be maintained.

§355.808. Restraint Prohibitions.

Restraints that employ a technique listed in paragraphs (1) - (12) of this section are prohibited. These prohibitions shall be detailed in the facility's policies and procedures:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, intimidation or as a substitute for a disciplinary separation;

(2) restraints that deprive the resident of basic human necessities including restroom privileges, water, food, and clothing;

(3) restraints that are intended to inflict pain;

(4) restraints that place a resident in a prone or supine position with sustained or excessive pressure on the back, chest, or torso;

(5) restraints that place a resident in a prone or supine position with pressure on the neck or head;

(6) restraints that obstruct the airway or impair the breathing of the resident including a procedure that places anything in, on, or over the resident's mouth or nose;

(7) restraints that interfere with the resident's ability to communicate;

(8) restraints that obstruct the view of the resident's face;

(9) any technique that does not require monitoring of the resident's respiration and other signs of physical distress during the restraint;

(10) percussive or electrical shocking devices;

(11) non-ambulatory restraints; and

(12) chemical restraints.

§355.812. Restraint Documentation.

All restraints shall be fully documented. The documentation shall be maintained. Written documentation regarding the use of restraints shall, at a minimum, require:

(1) the name of resident;

(2) the name(s) and title(s) of staff members involved in the restraint;

(3) the date of the restraint;

(4) the duration of the each type of restraint, including notation of the time that each type of restraint began and ended;

(5) the location where the restraint occurred;

(6) the description of the preceding activities;

(7) the behavior that prompted the initial and continued restraint of the resident;

(8) the type of restraint(s) applied;

(A) the specific type of personal restraint hold applied; and

(B) any type of mechanical restraint device(s) applied.

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) whether or not any injury to the resident or staff occurred during the restraint and a description of the injury.

§355.816. Mechanical Restraint.

(a) Facility policies and practices shall ensure that mechanical restraints shall only be used by staff members who have been authorized to use them and have been trained in their use.

(b) Mechanical restraints shall be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. All faulty or malfunctioning devices shall be restricted from use until they are repaired or replaced.

This agency hereby certifies that the emergency adoption 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 June 3, 2013.

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Brett Bray
General Counsel
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For further information, please call: (512) 490-7014

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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (commission) proposes amendments to §35.4, concerning Entry, Movement, and Change of Ownership, in Chapter 35, which is entitled "Brucellosis". The purpose of the amendments is to remove the current permanent official identification requirement for sexually intact adult cattle changing ownership and to change the entry requirements for sexually intact cattle entering Texas from the states of Idaho, Montana, and Wyoming due to the risk of brucellosis, which is prevalent in the Greater Yellowstone Area (GYA) of those states.

The commission recently adopted identification requirements that all sexually intact cattle that are parturient or post parturient or 18 months of age and older, changing ownership, shall be officially identified with commission-approved permanent identification. The commission is proposing to remove the identification requirements for cattle and move any identification requirements to a new chapter for the purpose of establishing the standards for livestock under the federal animal disease traceability program.

The commission is also proposing to change the brucellosis regulations to require an entry permit and a post entry test for all breeding cattle from the states of Idaho, Montana, and Wyoming. In view of the continued occurrence of brucellosis infection disclosed in domestic cattle, elk, and bison in the states of Wyoming, Montana, and Idaho that border Yellowstone National Park, otherwise known as the GYA, the commission is proposing bovine brucellosis entry regulations for breeding cattle from these three states. Analysis of the United States Department of Agriculture Veterinary Services (USDA-VS) October 2012 review of the GYA states disclosed various weaknesses in the biosecurity plans for cattle movements from the Designated Surveillance Area (DSA), even though all three states are considered "Free" of brucellosis by USDA. Test-eligible cattle (sex/age requirements vary between the states) within the DSA of all three states are allowed movement out of the DSA with one negative test within 30 days, which appears to qualify these animals for interstate shipment without restrictions. Information gathered during the USDA-VS review and more recent information on elk population dynamics raises great concern about the ability of the GYA states' brucellosis management plans to adjust quickly enough to prevent spread of disease. The cessation of comprehensive national and state brucellosis surveillance puts Texas at risk of not being able to quickly detect brucellosis if introduced from these states.

The commission is proposing that all sexually intact females and breeding bulls over 18 months of age entering Texas from Idaho, Montana, and Wyoming be held under restriction until tested negative for bovine brucellosis no less than 60 days and no more than 120 days after entry. Female cattle under 18 months of age (heifers) or adult females that have not calved (pre-parturient) must test negative no less than 30 days nor more than 90 days after calving (post parturient). All testing will be at the owner's expense. All cattle described above requiring a post entry test must also receive an entry permit issued in advance by the commission.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit will be to protect the Texas cattle industry from any undue risk of exposure to brucellosis.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. That subsection also provides that the commission also is authorized to adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Section 161.056 provides that in order to provide for to control disease and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, the commission may develop and implement an animal identification program that is consistent with the USDA's National Animal Identification System. Also, subsection (c) provides that the commission may require the use of official identification numbers assigned as part of the animal identification program for animal disease control, animal emergency management, and other commission programs.

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

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

Chapter 163 has statutory authority for brucellosis control. Section 163.002, entitled "Cooperative Program", provides that "In order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture."

Also, §163.066 provides "As a control measure, the commission by rule may regulate the movement of cattle. The commission may restrict the intrastate movement of cattle even though the movement of the cattle is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another procedure that is epidemiologically sound before or following the movement of cattle."

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

§35.4. Entry, Movement, and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. Sexually intact cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas other than direct to slaughter, quarantined feedlot or designated pens. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen.

(B) Spayed heifers shall be identified by branding prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine; however, if the sexually intact female cattle have not had their first calf prior to the 120 to 180 day post entry test, the quarantine will not be released until a second negative test for brucellosis is conducted no sooner than 30 days after the animal has had its first calf and the second negative test has been confirmed.

(6) Testing requirements for sexually intact cattle moving directly to a quarantined feedlot or designated pen. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded

prior to or upon arrival at the quarantined feedlot or designated pen, and may move to the quarantined feedlot or designated pen only in sealed trucks with a VS 1-27 permit issued by a representative of TAHC or USDA.

(7) Responsibility for costs. All costs of calfhood vaccination, testing, and retesting shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All nonvaccinated female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements are:

(A) Female cattle entering for purposes of shows, fairs and exhibitions and returning to their original location.

(B) Female cattle moving within commuter herds.

(C) Spayed heifers.

(D) Female cattle from free states.

(E) Female cattle from other than free states shall be vaccinated as follows:

(i) Entering from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, a feedlot for feeding for slaughter, or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(ii) Entering from an out-of-state livestock market to a Texas livestock market, a feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" brand permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market, then they shall be consigned from the market only to a feedlot for feeding for slaughter, or direct to slaughter, and accompanied by an "S" permit. If consigned to a feedlot, they shall also be "F" branded high on the tail-head prior to or upon entering the feedlot.

(iii) Entering from any out-of-state location and destined for a Texas premise may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All non-quarantined cattle that are parturient or post parturient or that are 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers entering Texas:

(A) shall be moved directly from:

(i) a class free state or area; or

(ii) a certified free herd; or

(iii) a commuter herd as defined in these sections; or

(B) Cattle not from class free states or areas, certified brucellosis free herds, or commuter herds shall be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit; or

(C) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch, or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot.

(3) Requirements for cattle entering Texas from Idaho, Wyoming, and Montana.

(A) All breeding bulls and sexually intact female cattle entering Texas for purposes other than immediate slaughter or feeding for slaughter in a feedlot shall be tested for brucellosis 60 to 120 day post entry.

(B) Sexually intact female cattle entering Texas that have not calved must be held until tested negative 30 to 90 days after calving (post parturient).

(C) Nonvaccinated sexually intact female cattle between four and 12 months of age entering Texas for purposes other than immediate slaughter or feeding for slaughter shall be officially brucellosis vaccinated prior to entry as provided in paragraph (1) of this subsection. The vaccination exception in paragraph (1)(D) of this subsection does not apply to cattle entering Texas from Idaho, Wyoming, and Montana.

(D) All cattle must also meet the applicable requirements contained in Chapter 51 of this title (relating to Entry Requirements). All breeding bulls and sexually intact female cattle shall obtain an entry permit from the commission as provided for in §51.2 of this title (relating to General Requirements).

(c) Change of ownership within Texas.

[~~(1)~~] [~~Vaccination.~~] It is recommended that all female cattle between four and 12 months of age being purchased or sold for use in grazing, breeding, or dairying operations be officially vaccinated.

[~~(2) Identification. All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers changing ownership within Texas shall be officially identified with an official eartag or other form of official permanent identification as approved by the Commission except:~~]

[~~(A) Commission personnel may exempt from the permanent identification requirement beef cattle presented for sale at a livestock market if, upon consultation with market ownership or management, it is determined that the animal's physical condition makes the handling required to apply permanent identification unsafe or injurious in nature.~~]

[~~(B) Beef cattle exempted from the permanent identification requirement under this subsection must be sold and consigned to a state or federally approved slaughter establishment and movement permitted by Commission representatives; or~~]

(d) Movement to Mexico. All cattle 18 months of age and older except steers and spayed heifers must be tested negative within 120 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

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 May 28, 2013.

TRD-201302162
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 719-0724

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CHAPTER 39. SCABIES

4 TAC §39.9

The Texas Animal Health Commission (commission) proposes amendments to §39.9, concerning Chorioptic Mange, in Chapter 39, which is entitled "Scabies". The purpose of the amendments is to include new types of acceptable treatment for Chorioptic Mange.

Scabies (from Latin: *scabere,* "to scratch") is a contagious skin infection. The infection in animals is caused by a different but related mite species, and is called sarcoptic mange. Scabies may occur in a number of domestic and wild animals; the mites that cause these infestations are of different scabies subspecies. Scabies-infected animals suffer severe itching and secondary skin infections. They often lose weight and become frail. The most frequently diagnosed form of scabies in domestic animals is sarcoptic mange, which is found on dogs. The scab mite *Psoroptes* is the mite responsible for mange.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to protect our livestock industry from exposure to Scabies by use of some newer treatment products.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

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

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

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

§39.9. Chorioptic Mange.

(a) All livestock infested with or exposed to chorioptic mange will be dipped, [~~or~~] sprayed, injected or topically treated pursuant to the procedures for treatment of exposure to psoroptic scabies or as otherwise directed by the commission. [~~The executive director may authorize the use of a spray for the eradication of chorioptic mange if dipping facilities are not available.~~]

(b) When dipping is the selected treatment, the following procedures shall apply:

(1) All infested or exposed livestock must be dipped twice with Co-Ral (Coumaphos) or GX-118 (Prolate), ten to 14 days apart. They must be kept in the dipping vat at least one minute. The heads of all animals must be submerged and wet before the animals leave the vat.

(2) At the first dipping, all animals will be counted and paint-branded on the left hip or side. At the second dipping, a similar brand will be placed on the right hip or side.

(c) When Avermectins are the selected treatment, the following procedures shall apply:

(1) All infested or exposed livestock must be treated with Ivermectin, Doramectin, Eprinomectin, Moxidectin or Cydectin.

(2) All infested or exposed livestock must be treated in accordance with the label directions under the supervision of the commission; the United States Department of Agriculture, Veterinary Services; or an accredited veterinarian.

(3) Treated livestock may be released from quarantine not less than 14 days from date of treatment provided they have been kept physically separated for 14 days from all untreated livestock.

(4) Dairy cattle of breeding age must not be treated with Ivermectin, Doramectin or Moxidectin.

(5) Livestock treated with Avermectins must be withheld from slaughter according to label directions.

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 May 28, 2013.

TRD-201302163
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 719-0724

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CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §§40.1 - 40.3

The Texas Animal Health Commission (commission) proposes amendments to §40.1, concerning Definitions, §40.2, concerning General Requirements, and §40.3, concerning Herd Status Plans for Cervidae, in Chapter 40, which is entitled "Chronic Wasting Disease" (CWD). The proposed amendments are for the purpose of revising some of the recently adopted requirements to address some changes in interpretation of the federal CWD program.

The commission provides a voluntary herd monitored status program for species that are susceptible to CWD. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service recently adopted an interim final rule to establish a national CWD Herd Certification Program with minimum requirements for interstate movement of deer, elk, and moose, or cervids in the United States. Participation in the program will be voluntary. The federal CWD Herd Certification Program is found in 9 CFR Subchapter B, Part 55. The commission recently adopted changes to the state's CWD Herd Certification Program to meet the federal program standards. However, based on modifications in interpretation of the federal requirements, the commission is making some amendments. The first change is to the definition of "Physical Herd Inventory" to remove the requirement that all animals in the herd must be restrained in order to have the identification validated by the person performing the inventory verification. The second modification is the fencing requirement found in §40.3(a) which provides that a herd premises must have perimeter fencing of a minimum of eight feet in height and adequate to prevent ingress or egress of cervids. That standard is found in the Uniform Method and Rules for CWD, but under the federal regulations the standard provides merely that the fencing must be adequate to prevent ingress or egress of cervids, and the commission is modifying agency requirements to meet that standard by removing the eight-foot requirement.

FISCAL NOTE

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

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the commission has a herd monitored program that can meet the new federal interstate movement requirements, but with flexibility to represent some modifications in federal interpretation.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Section 161.0541, entitled Elk Disease Surveillance Program, provides that the commission by rule may establish a disease surveillance program for elk. Rules adopted under this section

must: (1) require each person who moves elk in this state to have elk tested for chronic wasting disease or other diseases as determined by the commission; (2) be designed to protect the health of the elk population in this state; and (3) include provisions for testing, identification, transportation, and inspection under the disease surveillance program.

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

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

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

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

§40.1. Definitions.

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

(1) Approved Laboratory--A diagnostic laboratory approved by the APHIS Administrator to conduct official tests for CWD in accordance with 9 CFR §55.8.

(2) Certified CWD Sample Collector--An individual who has completed appropriate training recognized by his or her State on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been certified to perform these activities by the Commission.

(3) Chronic Wasting Disease (CWD)--A transmissible spongiform encephalopathy (TSE) of susceptible species.

(4) Commingled/Commingling--Farmed cervids are commingled if they are housed or penned together having direct physical contact with each other, have less than 10 feet of physical separation (except in cases of "limited contact"; see definition) or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, or sharing equipment, pens or stalls, pasture, or water sources/watershed (i.e., housed in a pen that receives runoff or shares a natural or manmade body of water with another pen). Commingling includes contact with bodily fluids or excrement from other farmed animals. Farmed cervids commingled with other farmed cervids assume the status of the lowest program status animal in the group.

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

(6) CWD Exposed Animal--An animal that is part of a CWD-positive herd, or that has been commingled with a CWD-positive animal or resided on contaminated premises within the five years before diagnosis.

(7) CWD Profile--A cervid 12 months of age or older that is emaciated and exhibits some combination of clinical signs including abnormal behavior, increased salivation, tremors, stumbling, incoordination, difficulty in swallowing, excessive thirst, and excessive urination.

(8) CWD Susceptible Species--All species in the cervidae family determined to be susceptible to CWD, which means any species that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS. This includes white-tailed deer *(Odocoileus virginianus),* mule deer *(Odocoileus hemionus),* black-tailed deer *(Odocoileus hemionus columbianus),* North American elk or wapiti *(Cervus Canadensis),* red deer *(Cervus elaphus),* Sika deer *(Cervus Nippon),* moose *(Alces alces),* and any associated subspecies and hybrids.

(9) CWD Test Eligible--Unless otherwise specifically provided in these rules, all cervidae 12 months of age and over.

(10) Farmed or Captive--Privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or temporarily captured from a wild population for interstate movement and release.

(11) Herd--An animal or group of animals that are:

(A) Under common ownership, control, or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) where commingling of animals occurs; or

(B) A single herd also is considered to be all animals under common ownership, control, or supervision on two or more premises which are geographically separated but on which animals have been commingled or had direct contact with one another. If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. Herds must be separated by a distance of 30 feet or more. No commingling of animals may occur. If movement of animals does occur between herds, this movement must be recorded as it would if they were separately owned herds.

(12) Limited Contact--Any brief contact with a farmed animal such as in sale or show rings and alleyways at fairs, livestock auctions, sales, shows, and exhibitions. Limited contact does not include

penned animals having less than ten feet of physical separation or contact through a fence, or any activity where uninhibited contact occurs such as sharing an enclosure, a section of a transport vehicle, sharing equipment, food, or water sources, or contact with bodily fluids or excrement. Pens at fairs, livestock auctions, sales, shows, and exhibitions must be thoroughly cleaned and all organic material removed after use and before holding another animal.

(13) Official Animal Identification--A device or means of animal identification approved by APHIS for use in the Certification Program to uniquely identify individual animals. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:

(A) National Uniform Eartagging System;

(B) Animal Identification Number (AIN);

(C) Premises-based number system using a Premises Identification Number (PIN) in conjunction with a livestock production numbering system; or

(D) Any other numbering system approved by the Commission for the identification of animals in commerce.

(14) Complete [~~Physical~~] Herd Inventory--One in which all animals in the herd must be [~~restrained and individual identification recorded must be~~] validated by the person officially performing the inventory verification.

(15) Positive Herd--A herd in which a CWD-positive animal resided at the time it was diagnosed.

(16) Suspicious Animal--A cervid which has clinical signs that resemble the CWD profile.

(17) Suspicious Herd--A herd in which one or more animals are observed with clinical signs that resemble the CWD profile.

(18) Trace Herd--The term includes both trace-back and trace-forward herds. A trace-back herd is any herd where an affected animal has resided during a 60 month period prior to death. A trace-forward herd is any herd which has received animals from a positive herd during a 60 month period prior to death of the affected animal.

§40.2. General Requirements.

(a) Procedures for issuing hold orders and quarantines.

(1) All herds suspicious of CWD, in which one or more animals are observed with signs which resemble the CWD profile, shall be reported to a representative of the Commission. The herd shall be restricted by hold order until the investigation and diagnosis have been completed.

(2) Trace herds shall be restricted by hold order until an epidemiologic investigation has been completed and the herd has met all requirements specified in a herd plan.

(3) CWD positive herds shall be restricted by quarantine until the herd has met all requirements specified in a herd plan.

(4) All suspicious, trace, and positive herds not complying with the requirements of an investigation or herd plan shall be restricted by quarantine.

(b) Procedures in suspicious, trace, and positive herds.

(1) CWD suspicious animals shall be presented to a representative of the Commission for the purpose of collection and submission of appropriate samples to an official laboratory for diagnosis.

(2) Disposition of a positive herd without evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the herd owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals [~~12 months~~] of any age [~~or older~~] shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 months from the last case of CWD.

(3) Disposition of a positive herd with evidence of transmission within the herd as determined by a TAHC or USDA epidemiologist following completion of the investigation. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals [~~12 months~~] of any age [~~or older~~] shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 months from the last case of CWD.

(E) The herd shall remain under quarantine for 60 months from the last case of CWD.

(4) Disposition of trace herds. A herd plan will be developed by a TAHC or USDA epidemiologist in consultation with the owner, and their veterinarian (if requested by the owner). The herd plan shall include the following requirements for a period of five [~~three~~] years:

(A) Routine visual inspection of all animals in the herd by a TAHC or USDA veterinarian for the purpose of early detection of CWD suspicious animals.

(B) Annual verification of herd inventory by a TAHC or USDA veterinarian.

(C) Mandatory reporting of all CWD suspicious animals and all death losses. Mortality in animals [~~12 months~~] of any age [~~or older~~] shall be immediately reported to a TAHC or USDA veterinarian for the purpose of collection of appropriate samples for submission to an official laboratory for CWD surveillance.

(D) CWD exposed animals must be removed from the herd and:

(i) Humanely destroyed, tested for CWD, and disposed of as specified in subsection (c) of this section; or

(ii) Maintained under hold order for 60 months from the last potential exposure.

(c) Destruction of suspicious and CWD exposed animals. Animals destroyed due to a presumptive diagnosis of CWD, including CWD exposed animals in positive and trace herds, shall be humanely euthanized, appropriate samples collected to confirm the diagnosis, and disposed of by deep burial or incineration, including all animal products, by-products, and contaminated materials:

(1) on the premises where disclosed; or

(2) at a facility approved by the executive director.

(d) Payment of indemnity. The Commission may participate in paying indemnity to purchase and destroy CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the state payment for any such animals will be five percent of the appraised value established in accordance with 9 CFR §55.3. This payment is in participation with any Federal payments made in accordance with 9 CFR §55.2.

§40.3. Herd Status Plans for Cervidae.

(a) Enrollment Requirements. Herd owners who enroll must agree to maintain their herds in accordance with the following conditions:

(1) Each animal must be identified before reaching 12 months of age. All animals less than one year of age shall be officially identified on a change of ownership or when moved from the premise of origin.

(2) Herd premises must have perimeter fencing [~~of a minimum of eight feet in height and~~] adequate to prevent ingress or egress of cervids.

(3) The herd owner shall:

(A) Report, within five business days, all animals that *escape* or *disappear,* and all wild cervids that enter the facility; and

(B) Test all deaths (including animals killed on premises maintained for hunting and animals sent to slaughter) aged 12 months or older, in accordance with subsection (b) of this section.

(4) An annual inventory:

(A) An annual inventory shall be verified by TAHC personnel, USDA personnel or an accredited veterinarian. If requested by a producer to verify the inventory, the Commission will assess a fee of $100.00 per hour.

(B) The herd owner shall maintain herd records that include a complete inventory of animals with documents showing all escaped or disappeared animals and all test results for those animals that died.

(C) For animals seeking to qualify for movement in interstate commerce, a complete [~~physical~~] herd inventory must be performed [~~on~~] at the time a herd is enrolled and a complete [~~physical~~] herd inventory must be performed for all herds enrolled in the CWD Herd Certification Program no more than three years after the last complete [~~physical~~] herd inventory for the herd.

(D) The herd owner is responsible for assembling, handling, and restraining the animals and for all costs incurred to present the animals for inspection.

(5) To maintain separate herds, a herd owner shall:

(A) Maintain separate herd inventories and records;

(B) Separate working facilities;

(C) Separate water sources;

(D) Separate equipment or cleaned and maintained in accordance with Appendix V of the CWD Program Standards; and

(E) There shall be at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds.

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. Addition of animals from a lesser status herd will result in the receiving herd's status being lowered to that of the contributing herd.

(b) Testing Requirements. CWD test samples shall be collected and submitted to an official laboratory for CWD diagnosis using a United States Department of Agriculture (USDA) validated test. Test reporting shall be directed to the appropriate TAHC Regional Office. The samples may be collected by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Sample Collector. Tissue samples submitted must include the obex and at least one retropharyngeal lymph node from each animal being tested. If samples are missed, or poor quality samples are submitted, the state epidemiologist or his designee will review the circumstances and determine if the herd status will be advanced, held, reduced, or removed.

(c) Herd Status. Herd status designation shall be assigned on the basis of the number of years of participation provided that CWD is not confirmed in the herd:

(1) First Year - starts on enrollment when the herd is in compliance with the requirements of the CWD Herd Certification Program.

(2) Second Year - starts on the anniversary date of the first year after full completion of the requirements for first year status.

(3) Third Year - starts on the anniversary date of the second year after full completion of the requirements for second year status.

(4) Fourth Year - starts on the anniversary date of the third year after full completion of the requirements for third year status.

(5) Fifth Year - starts on the anniversary date of the fourth year after full completion of the requirements for fourth year status.

(6) Certified Status - achieved after five years participation in the program and in compliance with all the program requirements.

(7) Additions to enrolled herds.

(A) Additions may originate from herds of equal or higher status with no change in the status of the receiving herd.

(B) Additions may originate from herds of lower status with the receiving herd acquiring the lower status of the herd(s) involved.

(d) Identification Requirements. Each animal required to be identified by this section must have at least two forms of animal identification attached to the animal.

(1) One of the animal identifications must be a nationally unique animal identification number that is linked to that animal in the CWD National Database.

(2) Second identification must be unique for the individual animal within the herd and linked to the CWD National Database.

(e) Record Keeping. The herd owner shall maintain records for animals including any movements and for a transfer of ownership, and provide those to Commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five years. The records shall include the following information:

(1) All identifications (tags, tattoos, electronic implants, etc.);

(2) Birth date;

(3) Species;

(4) Sex;

(5) Date of acquisition and source of each animal that was not born into the herd (owner name, city, state);

(6) Date of removal and destination of any animal removed from herd (owner name, city, state);

(7) Date and cause of death for animals dying within the herd (if cause is known); and

(8) Date of CWD sample submission, submitter, owner, premises, animal information, and official CWD test results from approved laboratory.

(f) Inspection. A premise where a herd is located may be inspected by the Commission to determine compliance with the requirements.

(g) Fees. Participation in a Commission CWD Herd Status Program for Cervidae requires that a fee be paid as provided for in §33.5 of this title (relating to Herd Status/Certification Fees). An annual inventory verified by Commission personnel is assessed a fee of $100.00 per hour.

(h) Cancellation or suspension of enrollment by the Executive Director. The Executive Director may cancel or suspend enrollment after determining that the herd owner failed to comply with any requirements of this chapter. Before enrollment is canceled or suspended, notification will be provided which will inform the herd owner of the reasons for the action.

(1) The herd owner may appeal the cancellation of enrollment of a herd, or loss or suspension of herd status, by writing to the Executive Director within 15 days after receipt of the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action.

(2) The herd owner may request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the action and set forth a short, plain statement of the issues that shall be the subject of the meeting, after which:

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

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

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

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

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

(5) If the Executive Director determines, based on epidemiological principles, that other action is necessary, the Executive Director shall provide the herd owner with written notice of the action.

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 May 28, 2013.

TRD-201302164
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 719-0724

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CHAPTER 43. TUBERCULOSIS
SUBCHAPTER C. ERADICATION OF TUBERCULOSIS IN CERVIDAE

4 TAC §43.20, §43.21

The Texas Animal Health Commission (commission) proposes amendments to §43.20, concerning Definitions, and §43.21, concerning General Requirements, in Chapter 43, Subchapter C, which is entitled "Eradication of Tuberculosis in Cervidae". The purpose of the amendments is to include new types of tuberculosis tests for captive cervids.

Historically, the single cervical tuberculin skin test (SCT) and the comparative cervical tuberculin skin test (CCT) have been the only approved official tests for *Mycobacterium bovis* in captive cervids. Recently, the United States Department of Agriculture, Veterinary Services, approved the Stat-Pak as a primary test and the DPP test as a secondary test for official program testing to diagnose tuberculosis in captive elk, red deer, white-tailed deer, fallow deer, and reindeer when the test is conducted at an approved laboratory. Both of these tests offer the advantage of decreased handling of animals when compared to skin testing.

FISCAL NOTE

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

tation of these rules poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the state requirements will conform to the federal standard.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

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

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

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

§43.20. Definitions.

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

(1) Accredited Herd--A herd that has passed at least two consecutive official tuberculosis tests of all eligible animals conducted at nine to 15 month intervals, has no evidence of bovine tuberculosis, and meets the requirements of the UM&R.

(2) Affected herd--A herd that contains or has recently contained one or more animals infected with Mycobacterium bovis and has not passed the required tests for release from quarantine.

(3) Approved laboratory--A State/Federal Veterinary Diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture and Cervid TB Stat-Pak Antibody Testing shall be the National Veterinary Services Laboratory, Ames, Iowa. Food Safety Inspection Service, Field Service Laboratories, may be utilized for histopathology.

(4) Cervid TB Stat-Pak Antibody Test--A primary supplemental serologic test used to screen for bovine tuberculosis in elk, red deer, white-tailed deer, fallow deer, and reindeer only. Samples for this test shall only be collected by state and federal animal health officials or designated accredited veterinarians.

~~[(4) Blood Tuberculosis Test (BTB)--The BTB test is a supplemental test for bovine tuberculosis in Cervidae. The BTB test may be used, at no expense to the Commission, as a supplemental test to establish the disease status of a herd or to retest suspects. Samples for this test shall only be collected by state, federal, or accredited veterinarians.]~~

(5) Cervidae--All species of deer, elk, and moose raised under agricultural conditions for the production of meat, the production of other agricultural products, sport, or exhibition.

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

(7) Comparative Cervical Tuberculin (CCT) Test--The intradermal injection of biologically balanced bovine Purified Protein Derivative (PPD) [~~PPD~~] tuberculin and avian PPD tuberculin at separate sites in the mid-cervical area to determine the probable presence of bovine tuberculosis (Mycobacterium bovis) by comparing the response of the two tuberculins 72 hours (plus or minus six hours) following injection. This test may be used for retesting Single Cervical Tuberculin Test suspects and shall be administered only by an approved state or federal veterinarian.

(8) Designated Accredited Veterinarian (DAV)--An accredited veterinarian trained and approved to conduct the Single Cervical Test for tuberculosis on Cervids and the Cervid TB Stat-Pak

Antibody Test for tuberculosis on elk, red deer, white-tailed deer, fallow deer, and reindeer.

(9) Designated Tuberculosis Epidemiologist (DTE)--An epidemiologist who has demonstrated the knowledge and ability to perform the functions specified by the Bovine Tuberculosis Eradication Uniform Methods and Rules. The DTE must be selected jointly by the cooperating State Animal Health Official, the Area Veterinarian in Charge, and the Regional Epidemiologist. The National Animal Health Programs staff must concur in the appointment. The DTE has the responsibility to determine the scope of epidemiological investigations, assist in development of individual herd plans, and to coordinate disease surveillance and eradication programs within their geographic area of responsibility. The DTE has authority to make independent decisions concerning the use and interpretation of diagnostic tests and management of affected herds when those actions are supported by sound disease eradication principles.

(10) Direct shipment to slaughter--The shipment of tuberculosis reactors and suspects and tuberculosis-exposed cervids from the premises of origin, by permit, directly to a slaughtering establishment operating under state or federal inspection, without diversion to assembly points of any type.

(11) Dual-Path Platform Test (DPP)--A secondary more specific serologic test used when animals have non-negative results on the Stat-Pak test. The initial DPP is run on the non-negative blood submitted for the Stat-Pak test.

[(11) ELISA Test--The enzyme linked immunosorbant assay component of the BTB Test is recognized as a presumptive test for Bovine Tuberculosis in Cervidae. The ELISA test may be used to meet intrastate change of ownership test requirements.]

(12) Herd--A group of cervids and other hoof stock maintained on common ground or two or more groups of cervids and other hoof stock under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status. (A group is construed to mean one or more animals.)

(13) Individual Herd Plan--A written disease management plan that is designed by the herd owner and/or other herd representative and a State or Federal veterinarian to eradicate tuberculosis from an affected herd while reducing human exposure to the disease. The herd plan will include appropriate herd test frequencies, tests to be employed, and any additional disease or herd management practices deemed necessary to eradicate tuberculosis from the herd in an efficient and effective manner. The plan must be approved by the State Animal Health Official and the Area Veterinarian in Charge, and have the concurrence of the Regional or Designated Tuberculosis Epidemiologist.

(14) Monitored Herd--A herd on which identification records are maintained on animals over one year of age slaughtered and inspected for tuberculosis at an approved State/Federal slaughter facility or an approved laboratory, and animals tested negative for tuberculosis in accordance with the requirements for interstate movement specified in the Tuberculosis Eradication in Cervidae Uniform Methods and Rules. The initial qualifying total herd size is the annual average of animals one year of age or older during the initial qualifying period, which period shall not exceed three years. The combined number of slaughtered or tested animals in the sample must be evenly distributed over a three year period, and no less than half of the qualifying animals must be slaughter inspected. The rate to detect infection at a 2.0% prevalence level with 95% confidence would require a maximum number of 178 animals.

Figure: 4 TAC §43.20(14) (No change.)

(15) Negative animals--Cervids that show no response to a Single Cervical Tuberculin [tuberculosis] test or elk, red deer, white-tailed deer, fallow deer or reindeer that test negative on the Stat-Pak test. Animals that show a non-negative response on the Single Cervical Tuberculin Test or the Stat-Pak test may be [and have been] classified negative by the DTE [testing veterinarian] based upon history, secondary supplemental tests (CTT or DPP) or[,] examination of carcasses [or laboratory results].

(16) No gross lesion (NGL) animals--Cervids that do not reveal a lesion(s) of bovine tuberculosis upon necropsy.

(17) Official eartag--An identification eartag that provides unique identification for each individual animal by conforming to the alpha-numeric National Uniform Eartagging System.

(18) Official tuberculosis test--A test for bovine tuberculosis applied and reported by approved personnel. The official tests for cervidae are the single cervical test and[,] the comparative cervical test[, and the blood tuberculosis test]. The Stat-Pak test and the DPP test are considered official tests for elk, red deer, white-tailed deer, fallow deer or reindeer only.

(19) Permit--An official document issued by a representative of the Commission, USDA APHIS-VS, or an accredited veterinarian that is required to accompany reactor, suspect or exposed cervids to slaughter. The permit will list the reactor tag number or official eartag number in the case of suspect and exposed cervids; the owner's name and address; origin and destination; number of cervids included; and the purpose of the movement. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination of the permit is allowed.

(20) Qualified herd--A cervid herd that has undergone at least one complete official negative test of all eligible animals within the past 12 months and is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of the UM&Rs.

(21) Reactor--Any cervid that shows a response to an official tuberculosis test and is classified a reactor by the DTE [testing veterinarian].

(22) Single Cervical Tuberculin Test (SCT)--The intradermal injection of 0.1 mL (5,000 tuberculin units) of USDA PPD Bovis tuberculin in the mid-cervical region with reading by visual observation and palpation in 72 hours (plus or minus six hours) following injection. This test shall be administered only by a state, federal, or designated accredited veterinarian.

(23) Surveyed Herd--A cervid herd in which surveillance records are maintained on all animals over one year of age that are surveyed for evidence of bovine tuberculosis by routine post mortem inspection at an approved state/federal slaughter facility, or approved diagnostic laboratory, or routine tuberculosis tests performed by a designated accredited veterinarian or by other appropriate surveillance methods approved by a representative of the TAHC.

(24) Suspect--Any cervid that shows a response to the single cervical tuberculin test or any elk, red deer, white-tailed deer, fallow deer or reindeer that test non-negative on the Stat-Pak test and is not classified a reactor, or is classified suspect by a supplemental tuberculosis test.

(25) Tuberculin--A product that is approved by and produced under USDA license for the intradermal injection of cervids for the purpose of detecting bovine tuberculosis.

(26) Tuberculosis--A disease in Cervidae caused by Mycobacterium bovis (M. bovis).

§43.21. General Requirements.

[(a) Change of ownership requirements effective September 1, 1996, unless prior to that date sufficient information is obtained pursuant to §43.22(d)(1) of this title (relating to Herd Status Plans for Cervidae) to allow an epidemiological evaluation as to the necessity for change of ownership testing.]

[(1) Animal identification. All animals shall be individually identified by an official eartag or other approved identification device.]

[(2) Testing. All cervidae sold through auction markets shall be tested negative to a tuberculosis test within 90 days prior to sale, except:]

[(A) Animals originating from an accredited, qualified, monitored or surveyed herd.]

[(B) Animals consigned to an approved state/federal inspected slaughter facility.]

[(3) Recordkeeping requirements. Records documenting the sale of animals shall be maintained by the seller for a minimum period of five years.]

(a) [(b)] Reporting of tests. All cervidae tested shall be officially [individually] identified [by an official eartag] at the time of an official test. A report of all tuberculosis tests,[--]including the official identification of each animal, [by eartag number, age, sex, and breed--and] a record of the size of the response of the Single Cervical Tuberculin Test or the result of the TB Cervid Stat Pak Antibody Testing[,] where indicated, and test interpretation shall be submitted in accordance with the requirements of the cooperating state and federal officials.

(b) [(c)] Classification of cervidae tested.

(1) Single cervical tuberculin test.

(A) Herds of unknown status. All SCT responses shall be recorded and the animals classified as suspects and quarantined for retest with the CCT [or BTB], unless in the judgment of the testing veterinarian the reactor classification is indicated.

(B) Known infected herds. All responses shall be recorded and the animals classified as reactors.

(2) Comparative cervical test--All responses are to be measured to the nearest 0.5mm.

(A) Animals having a response to bovine PPD of less than 1mm should be classified negative.

(B) Animals having a response to bovine PPD from 1mm through 2mm that is equal to or greater than the avian PPD response shall be classified as suspects.

(C) Animals having a response to bovine PPD greater than 2.0mm but equal to the avian response shall be classified as suspects, except when in the judgment of the testing veterinarian the reactor classification is indicated.

(D) Animals meeting the criteria for suspect classification on two successive CCTs shall be classified as reactors.

(E) Animals having a response to bovine PPD which is greater than 2.0mm and is 0.5mm greater than the avian PPD response shall be classified as reactors.

(3) Suspect SCT cervids may be retested by [either] the CCT only [or the BTB]. The CCT may be applied within ten days following the SCT injection or after 90 days. If the CCT is applied within ten days of the SCT, the opposite side of the neck shall be used. [The sample for the BTB shall be taken 13-30 days after the SCT injection.] Animals positive to the CCT [or the BTB] shall be classified as reactors.

(4) Suspects may be necropsied in lieu of retesting, and, if found without evidence of M. bovis infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), shall be considered negative for tuberculosis.

[(5) Elisa Test--Animals positive to the Elisa test shall be classified as suspects and quarantined for retest with an official TB test.]

(c) Classification of captive elk, red deer, white-tailed deer, fallow deer or reindeer tested.

(1) Cervid TB Stat Pak antibody test.

(A) Herds of unknown status. All Stat Pak non-negative responses shall be recorded and the animals classified as suspects and quarantined for retest with the DPP unless in the judgment of the DTE the reactor classification is indicated.

(B) Known infected herds. All non-negative responses shall be recorded and the animals classified as reactors.

(2) Dual-Path Platform Test shall be performed on all non-negatives samples submitted for Stat Pak Testing. Animals non-negative on the Stat-Pak test and non-negative on a single DPP test should be classified as suspect unless the DTE determines that a reactor classification is warranted.

(3) Animals classified as suspect by a single DPP test may be retested with the DPP test only with a new blood sample drawn no sooner than 30 days after the initial sample was obtained.

(4) Animals that are non-negative on two successive DPP tests should be classified as reactor.

(5) Suspects may be necropsied in lieu of retesting, and, if found without evidence of M. bovis infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), shall be considered negative for tuberculosis.

(d) Disposition of Tuberculin-Responding Cervidae.

(1) Reactors shall remain on the premises where they were disclosed until a state or federal permit for movement has been obtained. Movement for immediate slaughter will be within 15 days of classification directly to a slaughter establishment where approved state or federal inspection is maintained. Alternatively, the animals may be destroyed and necropsy conducted by or under the supervision of a state or federal regulatory veterinarian that has been trained in tuberculosis necropsy procedures.

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

(A) retested by the CCT within ten days of the SCT injection; or

(B) retested by the CCT after 90 days; or

[(C) retested by the BTB test between 13 and 30 days after the SCT injection; or]

(C) [(D)] shipped under permit directly to a slaughter facility under state or federal inspection, or necropsied. If such animals are found without evidence of M. bovis infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(3) Suspects to the CCT [~~comparative cervical test or equivocal to the BTB~~] shall remain under quarantine until:

(A) comparative cervical suspects are retested by the CCT after 90 days; or

[~~(B) BTB equivocal animals are retested by the BTB test optimally before 60 days following the SCT injection; or~~]

(B) [~~(C)~~] such animals are shipped under permit directly to a slaughter facility under state or federal inspection, or necropsied. If such animals are found without evidence of M. bovis infection by histopathology and cultured (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(4) An animal meeting the suspect criteria on two successive CCT [~~or two BTB equivocal~~] tests followed by one suspect CCT test shall be classified as a reactor and be identified as such. The testing veterinarian must justify exceptions in writing and have the concurrence of State or Federal animal health personnel.

(e) Identification of Reactors. Reactor cervids shall be identified by branding with the letter "T" at least two by two inches in size, high on the left hip near the tailhead, and by tagging with an official eartag bearing a serial number and inscription "U.S. Reactor" attached to the left ear of each reactor animal.

(f) Disposition of elk, red deer, white-tailed deer, fallow deer or reindeer that are non-negative on the Stat-Pak test and non-negative on a single DPP test.

(1) Reactors shall remain on the premises where they were disclosed until a state or federal permit for movement has been obtained. Movement for immediate slaughter will be within 15 days of classification directly to a slaughter establishment where approved state or federal inspection is maintained. Alternatively, the animals may be destroyed and necropsy conducted by or under the supervision of a state or federal regulatory veterinarian that has been trained in tuberculosis necropsy procedures.

(2) Herds containing suspects to the Stat-Pak test and a single DPP test shall be quarantined until the suspect animals are:

(A) retested by the DPP test only with a new blood sample drawn no sooner than 30 days after the initial sample was obtained; or

(B) shipped under permit directly to a slaughter facility under state or federal inspection, or necropsied. If such animals are found without evidence of M. bovis infection by histopathology and culture (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis), they shall be considered negative for tuberculosis.

(3) Animals that are non-negative on two successive DPP tests should be classified as reactor. Any exceptions to reactor classification must be justified by the designated TB epidemiologist in writing and have the concurrence of the regional TB epidemiologist.

(g) [~~(f)~~] Quarantine procedures.

(1) All herds in which reactor animals are disclosed shall be quarantined. Exposed animals must remain on the premises where disclosed unless a state or federal permit for movement to slaughter has been obtained. Movement for immediate slaughter must be directly to a slaughter establishment where approved state or federal inspection is administered. Animals must be identified by official eartag. Use of "S" brand is required, or animals must be shipped in an official sealed vehicle. The "S" brand shall be applied to either the left jaw or the tailhead.

(2) Cervidae herds in which M. bovis is confirmed shall remain under quarantine if not depopulated, and must pass three consecutive official tuberculosis tests of all animals. The first test must be conducted 90 days or more after the last test yielding a positive animal, with two additional tests at 180-day minimum intervals. Five annual complete herd tests of all animals shall be given following the release from quarantine.

(3) Cervidae herds that have had a test of all eligible animals with NGL reactors only and no evidence of tuberculosis infection is found by histopathology and culture of M. bovis (including selected NGL specimens submitted from animals having no gross lesions indicative of tuberculosis) may be released without further restrictions.

(4) Cervidae herds in which compatible or suggestive lesions are found by histopathology without the isolation of M. bovis may be released from quarantine following a negative 90-day retest of the entire herd, provided there is no known association with M. bovis.

(5) Cervidae herds that exhibit NGL reactors in which no evidence of tuberculosis infection is found by histopathology and culture of M. bovis and are unable to conduct a test of all eligible animals, shall be evaluated by the state and/or regional tuberculosis epidemiologist for possible release of quarantine.

(h) [~~(g)~~] Procedures in affected herds. Disclosure of tuberculosis in any herd shall be followed by a complete epidemiological investigation. All cervids in herds from which tuberculosis animals originate, and all cervids that are known to have associated with affected cervids or other affected animals, shall be tested promptly. These procedures shall apply to adjacent and contact herds as well as to the evaluation and testing of possible source herds for the affected herd. Herds that have received exposed animals shall be tested following the slaughter or testing of the exposed animals. Every effort shall be made to ensure the immediate elimination of the disease from all species of animals on the premises. The herd shall be handled as outlined under subsection (g) [~~(e)~~] of this section[, ~~Quarantine Procedures~~].

(i) [~~(h)~~] Retest Schedules for High Risk Herds.

(1) In herds with a history of lesions compatible or suggestive for tuberculosis by histopathology, two complete annual herd tests shall be given after release from quarantine. Herds with a bacteriologic isolation of a Mycobacteria species other than M. bovis should be considered negative for bovine tuberculosis with no further testing requirements.

(2) In a newly assembled herd on premises where a tuberculosis herd has been depopulated, two annual herd tests shall be applied to all animals. The first test must be approximately six months after assembly of the new herd. If the premises are vacated for over one year, these requirements may be waived.

(3) Exposed animals previously sold from known infected herds shall be depopulated if possible, or tested with the SCT or Stat Pak/DPP by State or Federal veterinarians. [~~The BTB test may be used simultaneously with the SCT as an additional diagnostic test.~~] All animals non-negative [~~positive~~] to either test shall be classified as reactors.

(A) If bovine tuberculosis is confirmed in the exposed animal(s), the remainder of the receiving herd shall be classified as an infected herd and handled according to subsection (g)[~~(f)~~](2) of this section.

(B) If negative to the test, the exposed animal(s) will subsequently be handled as if a part of the infected herd of origin for purposes of testing, quarantine release, and the five annual high-risk tests. The remainder of the herd shall be tested at the time of the initial

investigation and retested in one year with the SCT or Stat Pak/DPP. Supplemental diagnostic tests may be used if needed.

(4) Herds indicated as the source(s) of animals in slaughter traceback investigations shall be placed under quarantine within 30 days of notification to the area office, and a herd test scheduled. Testing of source herds of slaughter animals having lesions of tuberculosis shall be done by state or federal regulatory veterinarians using the SCT or Stat Pak/DPP.

(A) If the herd of origin is positively identified and M. bovis has been confirmed by bacterial isolation from the slaughter animal, all animals responding to the SCT or Stat Pak/DPP shall be classified as reactors. In all other cases, supplemental diagnostic tests may be used.

(B) In herds identified as the source of culture negative lesioned animals, responding animals may be classified as reactors or suspects. If classified as suspects, they may be retested by supplemental diagnostic tests.

(j) [~~(i)~~] Cleaning and disinfection of premises, conveyances, and materials. All premises,[--]including all structures, holding facilities, conveyances, and materials[--]that are determined by program officials to constitute a health hazard to humans or animals because of tuberculosis, shall be properly cleaned and disinfected. This shall be done within 15 days after the removal of tuberculosis-affected or exposed cervids in accordance with approved procedures. However, these officials may extend the time limit for disinfection to 30 days when a request for such extension is received prior to the expiration date of the original 15-day period allowed.

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 May 28, 2013.

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Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 719-0724

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CHAPTER 50. ANIMAL DISEASE TRACEABILITY

4 TAC §50.1, §50.2

The Texas Animal Health Commission (commission) proposes new Chapter 50, §50.1 and §50.2, concerning Animal Disease Traceability. The purpose of the new chapter is to establish standards for facilities or locations which must be approved to identify livestock moving interstate under the federal disease traceability program.

The United States Department of Agriculture (USDA) has amended its regulations and established minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under USDA's rulemaking, unless specifically exempted, livestock belonging to species covered by the regulations must be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. These regulations specify approved forms of official identification for each species but allow the livestock covered under this rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The federal rule provides for an approved tagging site, which is a premise, where livestock moving interstate may be officially identified upon arrival on behalf of their owner or shipper. Under the federal rule the tagging facilities must be officially approved by the state where located. The effective date of the USDA rule is March 11, 2013, and it is found in 9 CFR Part 86.

The first section in the new chapter is for applicable definitions. The second section is to establish the requirements for an approved tagging site. The USDA rule provides for approved tagging sites so producers who cannot or prefer not to tag their animals can move cattle interstate to a location where the animals will be officially identified on their behalf. An approved tagging site is authorized to receive and offload cattle that require official identification and to officially identify those cattle in accordance with the protocols defined by the State or Tribal animal health official and Federal Area Veterinarian in Charge. An approved tagging site is a premise, authorized by animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care or control of the animals when they are brought to the premises. While livestock markets are frequently referenced as being potential approved tagging sites, other locations, such as feedlots, could also become approved tagging sites.

An animal identification number is a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States or a unique country code for any U.S. territory that has such a code and elects to use it in place of the 840 code). The alpha characters USA or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording may be used as an alternative to the 840 or other prefix representing a U.S. territory; however, only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015. The AIN beginning with the 840 prefix may not be applied to animals known to have been born outside the United States.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses. The identification tags are available at no cost to producers and other parties who will be applying official identification. The necessity of official identification for specific animals to move interstate also creates an opportunity for identification to be applied by a third party for a nominal fee. The actual cost of tagging will vary some depending on the situation, but the federal requirement allows for untagged animals to enter the state as an exception to the federal identification requirement, which

has afforded the cattle producer some reduced cost by not having them identified prior to movement.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to have authorized tagging sites located in Texas and operating under the federal animal disease traceability system, which will provide sustained disease surveillance, control, enhanced marketability, quality assurance, and the related relative freedoms of commerce both intra and interstate.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

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

Under §161.081, the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section, the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission. Under §161.112, the commission may adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases. Also, the commission may adopt rules requiring permits for moving exotic livestock and exotic fowl from livestock markets as necessary to protect against the spread of communicable diseases.

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

§50.1. Definitions.

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

(1) Animal identification number (AIN)--A numbering system for the official identification of individual animals that provides a nationally unique identification number for each animal. Only the AIN beginning with the 840 or other prefix representing a U.S. territory will be recognized as official for use on AIN tags applied to animals on or after March 11, 2015.

(2) Approved livestock facility--A stockyard, livestock market, buying station, concentration point or any other premises, under State or Federal veterinary inspection, where livestock are assembled and that has been approved by the Texas Animal Health Commission.

(3) Approved tagging site--A premises, authorized by the Texas Animal Health Commission, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

§50.2. Approved Tagging Site.

(a) In order to be approved as a tagging site the person responsible for the tagging site must agree to administer the tagging of livestock at their location in accordance with the following requirements:

(1) Obtain official identification eartags only as directed by the commission.

(2) Unload animals requiring official identification only when the owner or the person in possession, care, or control of the animals agrees to have the animals officially identified in accordance with approved tagging site protocols.

(b) Requirements for officially identifying animals:

(1) Officially identify animals required to be identified before commingling with animals from different premises, or use a backtag or other method to accurately maintain the animal's identity until the official eartag is applied. The official identification can then be correlated to the person responsible for shipping the animal.

(2) Apply only official eartags to animals not already officially identified.

(3) Do not remove official identification devices unless authorized by commission personnel.

(c) Maintain tagging records using forms or electronic systems as directed by animal health officials to include at a minimum:

(1) The name, street address, city, state, and zip code of the owner or person responsible for the animals tagged.

(2) The official identification numbers of the tags applied associated with the owner or person responsible for the animals.

(3) The date the official identification eartags were applied.

(d) Provide the records to the commission if requested.

(e) Ensure the security of official eartags and distribution records by:

(1) Maintaining a record of all official identification eartags received, distributed, and applied at the tagging site for a minimum of five years.

(2) Keeping the inventory of tags and records in a secure place accessible only to tagging site personnel.

(3) Immediately reporting any lost or stolen tags to the commission.

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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Gene Snelson
General Counsel
Texas Animal Health Commission
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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.5

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §31.5, relating to Alcoholic Beverage Commission Charge Schedule, to re-title it to more accurately reflect its content, to change a reference to the state agency responsible for promulgating rules related to charges for public information requests, to eliminate unnecessary text that merely restates requirements already found elsewhere in Texas law or that is more appropriately addressed as a matter of internal policy, and to clarify the relationship between the officer for public information and the open records coordinator.

Texas Government Code §552.262 provides that the Attorney General shall adopt rules for use by each governmental body in determining charges for providing public information. The Attorney General's rules are found at 1 Texas Administrative Code §§70.1 - 70.12. Under Texas Government Code §552.201, the chief administrative officer of a governmental body is the officer for public information for purposes of the Public Information Act. The commission must abide by these provisions of the Government Code and therefore it is not necessary to replicate the requirements in the commission's rules.

Section 31.5 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the rule continues to exist but that it should be amended.

Emily E. Helm, General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government.

The proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Ms. Helm has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the agency's rules will accurately reflect administration of the agency's responses to public information requests.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendment if a request for such a hearing is made by June 21, 2013. Requests for a hearing may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted by email to martin.wilson@tabc.state.tx.us. Notice of the hearing, if one is requested, will be provided to the requestor and on the commission's website at http://www.tabc.state.tx.us/. The hearing, if one is requested, will be held no earlier than July 8, 2013, at the commission's headquarters at 5806 Mesa Drive in Austin, Texas.

The proposed amendment is authorized by Alcoholic Beverage Code §5.12, which provides that the commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes; by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and by Government Code §2001.039, which requires the agency to periodically review its rules to determine whether the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §5.12 and §5.31 and Government Code §§552.201, 552.262 and 2001.039.

§31.5. Public Information Act Requests [~~Alcoholic Beverage Commission Charge Schedule~~].

(a) Charges made for providing copies of public information by the Texas Alcoholic Beverage Commission shall be assessed in accordance with the schedule of charges maintained by the Office of the Attorney General [~~Texas General Services Commission~~] and found at 1 TAC §§70.1 - 70.12 [~~§§111.63-111.70~~].

[(b) All agency charges for the production of public records will be itemized and billed utilizing an agency standardized billing statement. The statement shall reflect the following information:]

[(1) date of billing;]

[(2) description of information requested;]

[(3) name of agency, company, corporation, individual, or entity requesting the information;]

[(4) address of requestor to include street, P.O. Box, city and zip code;]

[(5) telephone number of requestor;]

[(6) method of payment, i.e. cash, check, etc;]

[(7) itemization of charges to include the delivery medium cost, personnel charges, overhead charges, computer resource charges, programming time, postage/shipping charges, fax charges, and other miscellaneous charges; and]

[(8) total charges to requestor.]

(b) [(c)] The General Counsel [counsel for the agency] or the General Counsel's designee shall be the agency's open records coordinator. The open records coordinator is subject to the direction of the Administrator, who is the officer for public information of the agency pursuant to Texas Government Code §552.201.

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 June 3, 2013.

TRD-201302251
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 206-3489

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER B. ORGANIZATION OF THE BOARD STAFF

22 TAC §131.35

The Texas Board of Professional Engineers (Board) proposes an amendment to §131.35, regarding employee training and financial assistance.

The proposed amendment to §131.35(d) changes the maximum amount of financial assistance from $900 per fiscal year per employee to $1500.

Jeff Mutscher, Director of Financial Services for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Mutscher also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an increase in compliance of the Board's rules.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to Jeff Mutscher, Director of Financial Services, Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-2934, or sent by email to rules@engineers.texas.gov.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.201(b), Powers and Duties of the Board, which authorizes the Board to spend money for any purpose the Board considers reasonably necessary for the proper performance of its duties under this chapter.

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

§131.35. Employee Training.

(a) - (c) (No change.)

(d) Financial assistance granted under this program shall not exceed $1500 [$900] per fiscal year per employee.

(e) - (o) (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 May 24, 2013.

TRD-201302157
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 440-7723

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners proposes amendments to §346.1, regarding Educational Settings. The amendments would eliminate the requirement that a PT reevaluate the student receiving physical therapy services according to the requirements set out in §322.1, Provision of Services,

and would establish that the Plan of Care must be reviewed by the PT at least every 60 school days, or concurrent with every visit if the student is seen at intervals greater than 60 school days, to determine if revisions are necessary.

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be better support for children who receive physical therapy services in the school setting under the auspices of the Individuals with Disabilities Education Act (IDEA). Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§346.1. Educational Settings.

(a) In the educational setting, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill educational goals. When a student is determined by the physical therapist to be eligible for physical therapy as a related service defined by Special Education Law, the physical therapist provides written recommendations to the Admissions Review and Dismissal Committee as to the amount of specific services needed by the student (i.e., consultation or direct services and the frequency and duration of services).

(b) The physical therapist implements physical therapy services in accordance with the recommendations accepted by the school committee members and as reflected in the student's Admission Review and Dismissal Committee reports.

(c) The physical therapist may provide general consultation or other physical therapy program services for school administrators, educators, assistants, parents and others to address district, campus, classroom or student-centered issues. For the student who is eligible to receive physical therapy as a related service in accordance with the student's Admission Review and Dismissal Committee reports, the physical therapist will also provide the consultation and direct types of specific services needed to implement specially designed goals and objectives included in the student's Individualized Education Program.

(d) The types of services which may require a physician's referral in the educational setting include the provision of individualized specially designed instructions and the direct physical modeling or hands-on demonstration of activities with a student who has been determined eligible to receive physical therapy as a related service. Additionally, they may include the direct provision of activities which are of such a nature that they are only conducted with the eligible student by a physical therapist or physical therapist assistant. The physical therapist should refer to §322.1 of this title (relating to Provision of Services).

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Education Program) must be reviewed by the PT at least every 60 school days, or concurrent with every visit if the student is seen at intervals greater than 60 school days, to determine if revisions are necessary. [~~Treatment provided by a PT or PTA is subject to the provisions of §322.1 of this title.~~]

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 May 31, 2013.

TRD-201302225
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 305-6900

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22 TAC §346.3

The Texas Board of Physical Therapy Examiners proposes amendments to §346.3, regarding Early Childhood (ECI) Setting. The amendments would correct the title of the rule and replace the word "educational" with "early childhood intervention" in subsection (e).

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering these amendments.

Mr. Maline has also determined that for each year of the first five-year period these amendments are in effect the public benefit will be clearer information regarding physical therapy services provided in this setting.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§346.3. Early Childhood Intervention (ECI) Setting.

(a) In the provision of early childhood services through the Early Childhood Intervention (ECI) program, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill family-centered goals. When a child is determined by the PT to be eligible for physical therapy, the PT provides written recommendations to the Interdisciplinary Team as to the amount of specific services needed by the child.

(b) Subject to the provisions of §322.1 of this title (relating to Provision of Services), the PT implements physical therapy services in accordance with the recommendations accepted by the Interdisciplinary Team, as stated in the Individual Family Service Plan (IFSP).

(c) The types of services which require a referral from a qualified licensed healthcare practitioner include the provision of individualized specially designed instructions, direct physical modeling or hands-on demonstration of activities with a child who has been determined eligible to receive physical therapy. Additionally, a referral is required for services that include the direct provision of treatment and/or activities which are of such a nature that they are only conducted with the child by a physical therapist or physical therapist assistant.

(d) The physical therapist may provide general consultation or other program services to address child/family-centered issues.

(e) Evaluation and reevaluation in the early childhood intervention setting [~~educational~~] setting will be conducted in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §1436, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Family Service Plan) must be reviewed by the PT every 30 days to determine if revisions are necessary.

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 May 31, 2013.

TRD-201302224
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 305-6900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 73. LABORATORIES

25 TAC §73.54, §73.55

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §73.54 and §73.55, concerning fee schedules for clinical testing and newborn screening, and chemical analysis.

BACKGROUND AND PURPOSE

This rule package concerns fees for laboratory services--specifically, fee schedules for clinical testing, newborn screening and chemical analyses. The rule package reflects proposed changes to the version of the rules that was recently amended in a larger rulemaking action pertaining to all department lab fees. Since the close of the public comment period for that rulemaking action, circumstances have occurred that make it necessary to submit these proposed amendments. These amendments would remove low volume tests and those performed at Women's Health Laboratory (WHL), would add new tests and rename the tests to more accurately reflect the actual procedure, and also would adjust test pricing, as described herein. A "low volume test," for purposes of this preamble, is one: that was ordered less than 100 times in 2011; that is not considered a core public health test by the department; and that is readily available from commercial laboratories. In addition, §73.54 would be reorganized by removing the language currently at subsection (c), which relates to tests performed on clinical specimens at the department's WHL, since that laboratory permanently closed on August 31, 2012. Some services offered exclusively at WHL in the rules, such as pap smears and cytology, would be eliminated through this new rulemaking proposal while some of the other tests (e.g., routine clinical tests and tuberculosis testing) would be performed at the remaining two department laboratories--South Texas Laboratory (STL) and the Austin laboratory. The WHL submitters have been notified as to which department laboratory will perform their testing as of September 1, 2012. Those few clinical tests which would no longer be offered by the department under this rulemaking proposal are available at commercial laboratories. The proposed fee changes reflect the department's current costs for providing the services at issue (see full discussion in this preamble).

The proposed amendments comport with Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 that allow the department to charge fees to a person who receives public health services from the department, and which is necessary for the department to recover costs for performing laboratory services.

Tests that will no longer be offered by the department are readily available elsewhere and only two specific fees would be increased by virtue of these rule changes. The increased fees are proposed to correct an error in the original cost calculation for one fee and correct a clerical error (cost methodology calculation conducted properly, but transcribed incorrectly into the rules itself) for another fee in the large rulemaking action recently completed (the only errors identified to date out of the approximately 700 fees calculated using the new methodology in that rule package). One fee would increase from $32.11 to $213.79. This fee is for a PCR test for *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii,* which our records show has recently only been requested 800 - 1,000 times annually, which is a low number in the overall spectrum of laboratory services purchased from the department. The second fee would increase from $67.49 to $114.04. This fee is for single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water, which our records show that during Fiscal Year 2011, the department only performed 93 times.

Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, requires that the department: (1) develop, document and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for the provision of laboratory tests; and (2) analyze the department's costs and update the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). In that recently-concluded rulemaking action (adopted October, 2012), the LSS

developed and documented a cost accounting methodology and determined the costs for each test performed. The methodology for developing cost per test included calculating the specific costs of performing the test or analysis and the administrative and overhead cost necessary to operate the state laboratories in question. It is these figures together which determined the revised fee amount for each of the tests in these fee schedules. In order to determine the specific cost for each test or analysis, LSS performed a work load unit study for every procedure or test offered by the laboratory. A work load unit was defined as a measurement of staff time, consumables and testing reagents required to perform each procedure from the time the sample enters the laboratory until the time the results are reported. More than 3,000 procedures performed by the department's laboratory were included in this analysis. These procedures translated to approximately 700 different tests listed in the department fee schedule. In the current rulemaking proposal, this same approach was employed on a much smaller number of tests. These proposed fee changes reflect the department's current costs for providing the services at issue.

SECTION-BY-SECTION SUMMARY

Existing §73.54(a)(1)(A)(ii) is proposed to be amended by adding a new test Amino Acid Dietary Monitoring priced at $16.61, with proposed renumbering accordingly.

Existing §73.54(a)(1)(B)(i) and (iii) are proposed to be amended by deleting two low volume tests, Antibody identification and Antibody titer, respectively and by renumbering the remaining subsection in this section to account for the removal of these two tests. These low-volume tests are proposed for deletion to make more efficient use of laboratory staff and to lower operational costs.

Existing §73.54(a)(1)(C)(iii) is proposed to be amended by deleting clause (iii), Phenylketonuria (PKU) full gene sequencing. This low-volume test is proposed for deletion to make more efficient use of laboratory staff and to lower operational costs.

Existing §73.54(a)(2)(A)(i) is proposed to be amended by updating the name of the test to "Aerobic isolation from clinical specimen" to more accurately identify the test and by updating the fee from $367.67 to $303.92. The reduced fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Existing §73.54(a)(2)(A)(iii) is proposed to be amended by updating the name of the test to "Anaerobic isolation from clinical specimen" to more accurately identify the test and by updating the fee from $197.10 to $118.39. The reduced fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Existing §73.54(a)(2)(A)(v) is proposed to be amended by deleting clause (v) "Cholera, culture confirmation--$32.73." This is not an accurate description of the test that is currently performed. The more accurate name and placement of the test will be in the definitive identification section.

Existing §73.54(a)(2)(A)(vii)(IV) is proposed to be amended by updating the name of the test to *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* detection by real-time polymerase chain reaction (PCR) to more accurately identify the test, and by correcting the price. This increase in price is necessary because an error was found in the original cost calculation (as revised in the recently-concluded rulemaking action pertaining to the entire LSS fee schedule) and needs to be corrected. The fee for the test would increase from $32.11 to $213.79, with the latter amount being necessary to recoup the department's actual costs as called for in the cost calculation formula. The cost methodology used is as described in the Background and Purpose section in this preamble. The remaining subsections will be renumbered accordingly.

Existing §73.54(a)(2)(A)(vii), which would be renumbered as clause (vi), is proposed to be further amended by inserting a new subclause (VII) for tests performed for Gonorrhea/Chlamydia (GC/CT) and by renumbering the remaining subsection accordingly.

Existing §73.54(a)(2)(A)(vii) is proposed to be further amended at existing subclause (XI) by updating the name of the test to *Neisseria* to more accurately identify the test and allow for typing of other species, and by updating the fee from $390.52 to $141.84. This reduction in fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Existing §73.54(a)(2)(A)(vii) is proposed to be further amended by inserting a new subclause (XVI) regarding a Vibrio test, at a price of $228.15.

Existing §73.54(a)(2)(A)(xi) is proposed to be amended by decreasing the price from $138.64 to $91.58. This reduction in fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Existing §73.54(a)(2)(B)(ii) is proposed to be amended by inserting a new subclause (IV) regarding Lewisite metabolites in urine (2-chlorvinylarsonous acid (CVAA) and 2-chlorovinylarsonic acid (CVAOA), liquid chromatography, inductively coupled plasma mass spectrometry (LC-ICP-MS), at a cost of $157.59. The subsection would be renumbered accordingly.

Existing §73.54(a)(2)(C)(i)(I)(-e-) is proposed to be amended by lowering the price to account for the implementation of a new technology which has reduced the cost of performing the test. The price for this test, Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex, would decrease from $197.41 to $166.70.

Existing §73.54(a)(2)(C)(v) is proposed to be amended by the addition of two new subclauses: (IV) MGIT drug susceptibility test, primary panel; and (V) MGIT PZA susceptibility test, priced at $115.05 and $77.17, respectively.

Existing §73.54(a)(2)(E)(ii), (vii), (xiv)(I) and (xvi) are proposed to be amended by deleting the following low-volume tests: (ii) *Aspergillus;* (vii) Fungus; and (xiv)(I) HIV 1,2, plus 0 screen; and (xvi) Legionella. These tests are proposed for deletion to make more efficient use of laboratory staff and to lower operational costs.

Existing §73.54(a)(2)(E)(v), (ix), (x), (xix), (xxiii), (xxiv), (xxviii), and (xxx) are proposed to be amended by changing the price to reflect new technology: (v) cytomegalovirus (CMV): (I) IgG is reduced from $399.97 to $23.23; (II) IgM is reduced from $161.02 to $24.26; (ix) Hepatitis A: (I) IgM is reduced from $317.74 to $44.04; (II) total is reduced from $219.60 to $34.45; (x) Hepatitis B: (I) core antibody is reduced from $143.90 to $36.06; (II) core IgM antibody is reduced from $295.64 to $44.75; (III) surface antibody (Ab) is reduced from $103.84 to $28.34; (IV) surface antigen (Ag) is reduced from $51.45 to $18.47; (xix) Mumps: (I) epidemic parotitis IgG is reduced from $154.46 to $22.62; (xxiii) Rubella: (I) IgM is reduced from $329.37 to $24.77; (II) Screen is reduced from $24.13 to $22.33; (xxiv) Rubeola: (II) screen (IgG)

is reduced from $165.16 to $21.35; (xxviii) Toxoplasmosis is reduced from $357.49 to $23.23; and (xxx) *Varicella zoster* virus (VZV) is reduced from $345.63 to $19.70.

New §73.54(a)(2)(E)(xii) is proposed to be amended by the addition of a new subclause (II) that is necessary for a new test for HIV Combo Ag/AB EIA, priced at $7.90. Existing §73.54(a)(2)(E)(xxi), which would be renumbered as (xviii), is proposed to be amended by lowering the price for QuantiFeron (tuberculosis serology) from $84.45 to $53.66 to reflect the implementation of new technology which has lowered the cost of performing the test.

Existing §73.54(a)(2)(E)(xxvii) is proposed to be further amended by adding a new test to subclause (IV), Screening, IgG at a price of $7.57.

In §73.54(a)(2)(F)(ii)(IV), a new test for the West Nile virus was added, priced at $57.87.

Existing §73.54(a)(2)(F)(v)(I) is proposed to be amended by updating the name of the test to Supplemental Cell Culture to more accurately identify the test.

In §73.54(a)(2)(F)(vi) is proposed to be amended by the addition of a new test for Dengue, real-time PCR, at a price of $215.52.

Existing §73.54(a)(2)(F)(x) is proposed to be amended by reorganizing all tests related to influenza under a new subclause to improve readability and achieve consistency of format. Existing §73.54(a)(2)(F)(x) and (xi) are proposed to be renumbered as §73.54(a)(2)(F)(xi)(I) and (II). New §73.54(a)(2)(F)(xi)(III) is proposed to add a new test for Influenza pyrosequencing for antiviral resistance for the amount of $13.11. Existing §73.54(a)(2)(F)(xii) is proposed to be renumbered as §73.54(a)(2)(F)(xi)(IV). Existing §73.54(a)(2)(F)(xiii) is proposed to be renumbered as §73.54(a)(2)(F)(xii). New §73.54(a)(2)(F)(xiii), (xiv) and (xv) are proposed to add a new test for Measles, real-time PCR for the amount of $126.83, Mumps, real-time PCR for the amount of $127.83 and a new text for Respiratory viral panel, PCR, for the amount of $167.13.

Existing §73.54(a)(2)(F)(xv)(I) is proposed to be amended by updating the name of the test to "Viral isolation, clinical" to more accurately identify the test.

New §73.54(b)(1)(D) and (G) is proposed to be amended to add new tests--(D) Gram Stain, priced at $8.06, and (G) Urine culture, priced at $11.59. Existing tests in this subclause would be renumbered accordingly.

New §73.54(b)(2)(A) is proposed to add a new test, Alanine Amino Transferase (ALT), priced at $1.34. New §73.54(b)(2)(F) is proposed to add a new test, Bilirubin, direct for $1.69. New 73.54(b)(2)(H) is proposed to add a new test, Bilirubin, total and direct profile for $2.44. New §73.54(b)(2)(R)(i) is proposed to add a new test, Glucose for $1.34. Subsequent subsections are proposed to be renumbered accordingly.

Existing §73.54(b)(2)(M),(V), and (BB) are proposed to be amended by changing the names of the test for better clarity. (M) Electrolyte panel--includes anion gap (calculated), CO2, chloride, potassium and sodium will be renamed Electrolyte panel--includes CO2, chloride, potassium and sodium. (V) Lipid profile panel--includes, cholesterol, HDL, and triglycerides will be renamed Lipid profile panel--includes, cholesterol, HDL, LDL, and triglycerides. (BB) Renal function panel--includes albumin, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN will be renamed Renal function panel--includes albumin, glucose, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN.

New §73.54(b)(3) is a proposed new paragraph to add tests related to emergency preparedness with subclauses (A) - (D): (A) Biological Threat reference culture--$198.28; (B) Definitive identification: (i) *Bacillus anthracis*--$145.72; (ii) Brucella species--$214.30; (iii) Burkholderia--$221.62; (iv) Francisella tularensis--$107.07; (v) *Yersinia pestis*--$313.47; and (vi) Unknown biological threat agent--$220.08; (C) Food Samples: (i) *Bacillus anthracis*--$23.77; (ii) Brucella Species--$25.77; (iii) *E.Coli* 0157:H7--$7.15; (iv) Francisella--$17.20; (v) Listeria--$21.30; (vi) Salmonella--$19.05; (vii) *Yersinia pestis*--$313.47; (D) PCR: (i) *Bacillus anthracis*--$58.41; (ii) Brucella--$58.41; (iii) Burkholderia--$58.41; (iv) *Francisella tularensis*--$58.41; (v) Influenza--$51.26; (vi) Influenza A--$53.63; (viii) Influenza A/H5--$125.00; (viii) Multiple Agent Panel--$169.39; (ix) Ricin--$150.00; and (x) *Yersinia pestis*--$58.41. Existing §73.54(b)(3) - (7) are proposed to be renumbered as §73.54(b)(4) - (8).

Existing §73.54(b)(3)(F) is proposed to add a new test Peripheral Smear Review, priced at $7.59 and renumber existing (F) to (G). Existing §73.54(b)(5)(A)(iii)(I) and (II) are updated to reflect new pricing: (I) conventional susceptibility (each drug) is reduced from $36.45 to $14.06, and (II) MGIT susceptibility (each drug) is reduced from $92.69 to $43.47. New §73.54(b)(6)(A)(iii) and (iv) are proposed to add new tests (III) MGIT susceptibility (each Drug) PZA, priced at $92.69, and (iv) for the Identification of AFB isolate, DNA probe, priced at $44.63. Existing §73.54(b)(6)(A)(iv) and (v) are proposed to be renumbered as §73.54(b)(6)(A)(v) and (vi) respectively. New §73.54(b)(6) would add a new test to subclause (G) Thyroxine (T4), free, priced at $10.89. Section 73.54(b)(6)(H) proposes to add a new test to the subclause, Thyroid Hormone (T3), uptake for $23.67, with subsequent renumbering accordingly. New §73.54(b)(8)(D) and (G) proposes to add a new test, (D) Random urine/creatinine profile, for $6.44 and (G) Urine Microscopic analysis for $5.54. Subsequent subsections are proposed to be renumbered accordingly. Existing §73.54(b)(7)(F) and (H) are proposed to be renamed for better clarity. Subparagraph (F) Thyroxin (T4), free, prenatal will be renamed to Thyroxine (T4), total. Subparagraph (H) Tri-iodothyronine (T3), uptake, total, prenatal will be renamed to new subparagraph (J) Tri-iodothyronine (T3), free.

Existing §73.54 is proposed to be reorganized by removing subsection (c), which relates to tests performed on clinical specimens at the department's WHL, since that laboratory was permanently closed on August 31, 2012. Some services offered exclusively at WHL in the rules, such as pap smears and cytology, would be eliminated through this new rulemaking proposal while some of the other tests would be performed at the remaining two department laboratories, STL and the Austin laboratory (e.g., routine clinical tests and tuberculosis testing). Those clinical tests, which would no longer be offered by the department under these proposed amendments, are readily available at commercial laboratories. Subsequent subsections are proposed to be renumbered accordingly.

Existing §73.54(d)(4)(A)(iv) is proposed to add a new test for *Cronobacter sakazakii,* priced at $115.17. New §73.54(d)(4)(A)(v)(II) is proposed by adding a new test for Non-0157 STEC, priced at $295.02 and by reorganizing all tests related to *Escherichia coli* under a new clause to improve readability and achieve consistency of format. Existing §73.54(d)(4)(A)(iv) and (v) are proposed to be renumbered

as §73.54(c)(4)(A)(v)(I) and (III). Existing §73.54(d)(8)(A) is proposed by adding a new test for West Nile Virus (WNV), mosquitoes, PCR, priced at $57.87 in new §73.54(c)(8)(A)(v).

Existing §73.54(d)(9) is proposed to be reorganized by deleting existing §73.54(d) (9)(A), (B) and (F) which are low volume tests. These low-volume tests are proposed for deletion to make more efficient use of laboratory staff and to lower operational costs. Existing §73.54(d)(9)(C), (D) and (E) are proposed to be renumbered as §73.54(c)(9)(A), (B) and (C) respectively.

New §73.54(e)(4) is proposed to add a new specimen processing and storage service, with an associated fee of $25.

Existing §73.55(2) is proposed to be amended by removing the phrase "including bottled water" to accurately reflect the testing. New §73.55(2)(C)(xiii) would add trihalomethanes, EPA method 551.1, priced at $43.91. Subsequent subsections are proposed to be renumbered accordingly.

Section 73.55(3)(A)(x) is proposed to add a new test for gluten, priced at $92.11, and existing §73.55(3)(A)(x) - (xx) are proposed to be renumbered as §73.55(3)(A)(xi) - (xxi) respectively.

Existing §73.55(3)(B)(ii)(I) is proposed to update pricing for mercury, EPA method 245.1 and EPA SW-846 methods 7470A and 7471B from $192.35 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Existing §73.55(4)(A)(iii)(I) is proposed to update pricing for mercury, sediment, EPA SW-846 method 7471B from $194.22 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Existing §73.55(5)(A)(i) is proposed to update pricing for fillets from $34.56 to $19.98. Existing §73.55(5)(B)(ii)(I) is proposed to update pricing for mercury, EPA method 7471B from $192.35 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Existing §73.55(6)(B)(ii)(II) is proposed to correct the price for the single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water. The fee would increase from $67.49 to $114.04. This increase in price is necessary because a clerical error was found in the existing rule text. The actual cost to perform the test is $114.04. This is the price that is listed on the published fee schedule on the department's Laboratory website. The error in the rule text was clerical and must be corrected to ensure that the Laboratory recoups the department's actual costs as called for in the cost calculation formula. The cost methodology used is as described in the Background and Purpose section in this preamble.

New §73.55(9)(G) is proposed to add a new composite sample storage service and associated fee of $19.23.

FISCAL NOTE

Dr. Grace Kubin, Director, LSS, has determined that for each year of the first five year years the sections are in effect, there will be fiscal implications to the state as a result of administering the sections as proposed. It is impossible to predict the volume of testing the laboratory will receive under a revised fee schedule as well as the actual resulting revenues, but this rulemaking proposal reflects the fee calculation methodology derived and implemented in the large recently-completed rulemaking action which revised the entire department laboratory fee schedule, consistent with Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011. SB 80 requires the LSS to develop and document a cost accounting methodology to determine costs for each test performed. Because the proposed rulemaking would reduce fees for some tests, the volume of those same tests may increase and thus result in a net increase in revenue. Some fees are being lowered to reflect cost savings that the department recently realized through changes in technology. The correction to the *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* and single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water fees would result in increased revenues to department unless the increase results in a substantial decrease of orders for that test.

General revenue from the state for the LSS operations has been reduced by $7.9 million (roughly 10%) for fiscal years 2012 - 2013. A portion of the revenues which come to LSS will be used to pay the bond debt on the laboratory building at the department's Central Office main campus, as required by the General Appropriations Act (GAA). Dr. Kubin has also determined that there may be an increased financial burden placed on certain department programs, as well as on local health departments, health care providers, and others that submit specimens for testing for the one test which would experience a fee increase in these proposed amendments. Some of the impacted external submitters may be small or micro-businesses. However, the fees for some tests would go under the proposed rule amendments, and so the fiscal impact would be determined by the combination of tests ordered by the particular submitter.

MICRO-BUSINESS AND SMALL BUSINESSES IMPACT ANALYSIS

Varieties of entities, and some few persons, approach the department to purchase laboratory services. Many of those services are currently included in department rules with fee schedules which list amounts for each service. The proposed amendments in this rulemaking proposal include two fees which would be increased, *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* detection by real-time polymerase chain reaction (PCR) and single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water. As discussed previously, that proposed increase is to correct a fee calculation error and clerical error in the previous rulemaking action, recently concluded, which updated the entirety of the LSS fee schedule consistent with SB 80. The corrected fee amounts would properly reflect the methodology used in that previous rulemaking action, which was designed to recoup the department's costs related to providing the service in its laboratories. Some of these proposed amendments would decrease other fee amounts for specific tests. The two fee increases may not be offset by the other fee decreases, for a particular submitter, and thus may have an adverse economic impact on such a small or micro-business. Since these increased fees will potentially impact all submitters (i.e., anyone who might order this test, alone or in combination with other tests), the department analysis under the Economic Impact Statement in this preamble will also serve to satisfy the Small Business Impact Analysis required by Texas Government Code, §2006.002(a).

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, 2007, (House Bill (HB) 3430) to require that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency must first prepare an Economic Impact Statement and a Regulatory Flexibility Analysis.

The definition of a "small business" for purposes of this requirement was codified at Texas Government Code, §2006.001(2). Under this definition, a "small business" is an entity that is: for

profit, independently owned and operated; and have fewer than 100 employees or less than $6 million in annual gross receipts. Independently owned and operated businesses are self-controlling entities that are not subsidiaries of other entities or otherwise subject to control by other entities (and are not publicly traded).

Dr. Kubin has determined that there may be an adverse economic effect on those small businesses who submit specimens or samples to the LSS for analysis using either of the two tests which would experience a fee increase under the proposed amendments. Therefore, the following two analyses have been performed:

--ECONOMIC IMPACT STATEMENT

The Economic Impact Statement in this preamble does not explicitly cover "micro-businesses," but Texas Government Code, §2006.002(a), requires an analysis of the impacts on such businesses. The department believes that some of the health care providers impacted by this proposed rule will be "micro-businesses" as well as "small businesses," and thus the department's analyses regarding the latter will also be applicable to the former. While it is true that a micro-business may be inherently somewhat less able to absorb new increased fees than a small business, the department believes that all businesses periodically experience increases in the cost of doing business. The revised fees in this package of proposed amendments were derived using the mandated methodology in SB 80. Two fees went up (correcting a previous calculation error and clerical error), and some fees went down. The impact on a particular submitter will vary depending on, among other things, what particular tests are ordered by that submitter.

The laboratory does not collect information on the size of a submitter's business, and so it does not have direct data at hand to definitely determine what percentage of its usual submitters are small or micro-businesses. However, the department has made an estimate, using an approach suggested in the Texas Office of the Attorney General guidance document associated with HB 3430. A review of The North American Industry Classification System (NAICS) on the U.S. Census Bureau website revealed four classifications that appear to represent all the submitter types for the LSS. Specific information on the number of small businesses listed for each of these codes in 2007 was found on the Texas Comptroller of Public Accounts Website. The NAICS codes that represent submitters to the LSS include: "6221" - General Medical and Surgical Hospitals (364 businesses listed of which 56 are defined as small businesses), "6214" - Outpatient Care Centers (578 businesses listed of which 442 are defined as small businesses), and "6223" - Specialty (except Psychiatric and Substance Abuse) Hospitals (116 businesses listed of which 80 are defined as small businesses). The total number of businesses listed for these three classification codes is 1058. Of that number, only 576 of the businesses listed (physician, clinics, and hospitals) are small businesses that could be affected by these rule amendments. This estimate corresponds to approximately 4% of the total number of submitters who submitted specimens to the LSS from January 1, 2010 through June 30, 2011, extrapolating based on the assumptions and data discussed previously. The department believes that most of these 578 small or micro-businesses are contractors for department programs such as Texas Health Steps and HIV Prevention. Therefore, the economic impact would be to the department program which hires each contractor, and it is those department programs which would ultimately have to absorb the fee increases. Subtracting these contractors from the total, the department believes this leaves a much smaller number of non-department contractor small and micro-businesses that could be impacted by any fee increases.

--REGULATORY FLEXIBILITY ANALYSIS

Texas Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, 2009, HB 3430, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. The department has considered several options for minimizing the adverse impacts on small businesses.

Option 1 - Maintain the *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* and single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water fees at their current level. The department cannot implement this option because SB 80 requires the department to develop, document and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for specific types of tests, as well as analyzing the department's costs and updating the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). The fee corrections included in these proposed amendments to the rule were derived using that methodology required by SB 80, consistent with Texas Health and Safety Code, §12.032. Keeping the fee at its current level would not reflect the use of the required methodology.

Option 2 - Allow an exemption from *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* and single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water fees increase for small and micro-businesses. Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 allow the department to charge fees to a "person" who receives public health services from the department, with the fee amount reflecting that which is necessary for the department to recover costs for performing laboratory services. Public health service fees generated by laboratory testing are appropriated to the LSS and are used to purchase supplies and equipment necessary for testing and to pay salaries of laboratory personnel (as well as to service the bond debt for the main department's laboratory building in Austin). If the department were to allow an exemption from any fees for small and micro-businesses, the reduction in revenues generated would impact the department's ability to maintain the current level of laboratory services. Such a fee structure would also not reflect the SB 80 methodology discussed at Option 1. Additionally, Texas Health and Safety Code, §12.032(e), states that the department may not fail to provide the service at issue if the submitter can demonstrate a financial inability to pay. So, if a small or micro-business could demonstrate, through submission of appropriate financial documentation that it truly was unable to pay for the one laboratory service at issue that would be an option for such a business. It should be noted, though, that an inability to pay is not the same thing as not having budgeted sufficient funds to pay, for example. The submitter would have to demonstrate, to the agency's satisfaction (through submission of tax returns and other documentation), that it simply did not have the funds at all to pay for the service in question.

Option 3 - Change *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* and single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water fees to level which preceded the recent rulemaking revision to the overall LSS

fee schedule. Texas Health and Safety Code, §§12.031, 12.032, and 12.0122 allow the department to charge fees to a person who receives public health services from the department, and those fees cannot exceed the amount which is necessary for the department to recover costs for performing laboratory services. Public health service fees generated by laboratory testing are appropriated to the LSS and are used to purchase supplies and equipment necessary for testing and to pay salaries of laboratory personnel (as well as to service the bond debt for the main department's laboratory building in Austin). If the department were to lower this fee back to its level prior to the recently-completed rulemaking action, as opposed to raising it as proposed in these amendments, the reduction in revenues generated would have a negative impact on the department's ability to maintain the current level of laboratory services. Such a fee structure would also not reflect the SB 80 methodology discussed at Option 1.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC BENEFIT

In addition, Dr. Kubin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be the continued operation of the department's laboratories, which perform important public health activities every day. The public would also benefit by the department adjusting its fees to recover the costs associated with providing these laboratory services, which is money for LSS operations that would then reduce the amount of funding required to come from the public's tax dollars (i.e. General Revenue). The public would also benefit from the proposed changes designed to improve clarity, readability and user-friendliness of the rules, in that there is a public benefit whenever a state improves the efficiency of its operations. The public will also benefit from the list of laboratory services currently available being updated for accuracy.

PUBLIC COMMENT

Comments on the proposal may be directed to Amy Schlabach, Laboratory Services Section, Mail Code 1947, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-6191 or by email at amy.schalabach@dshs.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized under Texas Health and Safety Code, §12.031 and §12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires the department to establish collection procedures, §12.035, which required the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendments affect the Texas Health and Safety Code, Chapters 12 and 1001; and Texas Government Code, Chapter 531.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

(a) Tests performed on clinical specimens, Austin Laboratory.

(1) Biochemistry and genetics.

(A) Newborn screening.

(i) Newborn screening panel--$33.60. (Fees are based on the newborn screening specimen collection kit which is a department approved, bar-coded, FDA approved medical specimen collection device that includes a filter paper collection device, parent information sheet, specimen storage and use information, parent disclosure request form, demographic information sheet, and specimen collection directions with protective wrap-around cover for the specimen that should be used to submit a newborn's blood specimen for the first or second screen, repeat or follow-up testing and which includes the cost of screening.)

(ii) Amino Acid Dietary Monitoring--$16.61.

(iii) [~~(ii)~~] Phenylalanine/tyrosine--$16.61.

(B) Clinical chemistry.

[(i) ~~Antibody identification--$260.70.~~]

(i) [~~(ii)~~] Antibody screen--$20.51.

[(iii) ~~Antibody titer--$46.07.~~]

(ii) [~~(iv)~~] Blood typing ABO--$20.51.

(iii) [~~(v)~~] Cholesterol--$4.07.

(iv) [~~(vi)~~] Glucose:

(I) glucose fasting--$3.96;

(II) glucose post prandial (1 hour)--$3.96;

(III) glucose post prandial (2 hour)--$7.91;

(IV) glucose random--$3.96;

(V) glucose tolerance test 1 hour--$7.91;

(VI) glucose tolerance test 2 hour--$11.87; and

(VII) glucose tolerance test 3 hour--$15.82.

(v) [~~(vii)~~] Hematocrit--$6.62.

(vi) [~~(viii)~~] Hemoglobin--$1.53.

(vii) [~~(ix)~~] Hemoglobin electrophoresis--$3.98.

(viii) [~~(x)~~] High-density lipoprotein (HDL)--$7.14.

(ix) [~~(xi)~~] Lead--$3.47.

(x) [~~(xii)~~] Lipid panel (consists of cholesterol, triglycerides, high density lipoprotein (HDL), and low density lipoprotein (LDL))--$10.57.

(xi) [~~(xiii)~~] Red blood cell antigens, other than ABO or Rh(D)--$260.70.

(xii) [~~(xiv)~~] RH typing--$20.51.

(C) DNA Analysis.

(i) - (ii) (No change.)

[(iii) ~~Phenylketonuria (PKU) full gene sequencing--$1726.03.~~]

(iii) [~~(iv)~~] Galactosemia common mutation panel--$383.21.

(iv) [~~(v)~~] Medium chain acyl-CoA dehydrogenase deficiency (MCAD), common mutation panel--$280.79.

(v) [~~(vi)~~] Very long chain acyl-CoA dehydrogenase deficiency (VLCAD), full gene sequencing--$1596.93.

(2) Microbiology.

(A) Bacteriology. Charges for bacteriology testing will be based upon the actual testing performed as determined by suspect organisms, specimen type and clinical history provided.

(i) Aerobic isolation [~~culture~~] from clinical specimen--$303.92 [~~$367.37~~].

(ii) (No change.)

(iii) Anaerobic isolation [~~culture~~] from clinical specimen--$118.39 [~~$197.10~~].

(iv) (No change.)

[(v) ~~Cholera, culture confirmation--$32.73.~~]

(v) [~~(vi)~~] Culture, stool--$158.07.

(vi) [~~(vii)~~] Definitive identification:

(I) bacillus--$175.88;

(II) group B streptococcus (Beta strep)--$113.70;

(III) *Bordetella*--$147.77;

(IV) *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* detection by real-time polymerase chain reaction (PCR)--$213.79 [~~$32.11~~];

(V) *Campylobacter*--$165.44;

(VI) enteric bacteria--$243.97;

(VII) Gonorrhea/Chlamydia (GC/CT):

(-a-) GC/CT, amplified RNA probe--$20.28;

(-b-) GC culture confirmation by amplified or direct probe--$37.66; and

(-c-) GC screen--$44.54.

(VIII) [~~(VII)~~] gram negative rod--$261.00;

(IX) [~~(VIII)~~] gram positive rod--$226.12;

(X) [~~(IX)~~] *Haemophilus*--$242.23;

(XI) [~~(X)~~] *Legionella*--$265.57;

(XII) [~~(XI)~~] *Neisseria* [~~*meningitides*~~]--$141.84 [~~$390.52~~];

(XIII) [~~(XII)~~] pertussis--$287.98;

(XIV) [~~(XIII)~~] *Staphylococcus*--$188.88; and

(XV) [~~(XIV)~~] *Streptococcus*--$258.91.

(XVI) Vibrio--$228.15.

(vii) [~~(viii)~~] Enteric bacteria:

(I) culture confirmation--$158.53;

(II) *Shigella* serotyping--$120.38; and

(III) *Salmonella* serotyping--$86.63.

(viii) [~~(ix)~~] Enterohaemorrhagic *Escherichia Coli* (EHEC), shiga-like toxin assay--$38.60.

(ix) [~~(x)~~] *Escherichia coli (E.coli)* O157:H7, culture confirmation--$26.64.

(x) [~~(xi)~~] *Haemophilus:*

(I) culture confirmation, serological--$91.58 [~~$138.64~~]; and

(II) isolation from clinical specimen--$100.18.

(xi) [~~(xii)~~] *Neisseria meningitides,* serotyping--$167.48.

(xii) [~~(xiii)~~] Shiga toxin producing *E.coli,* PCR--$36.60.

(xiii) [~~(xiv)~~] Toxic shock syndrome toxin I assay (TSST 1)--$125.25.

(xiv) [~~(xv)~~] *Vibrio cholerae,* sterotyping--$32.73.

(B) Emergency preparedness.

(i) (No change.)

(ii) Chemical Threat agent Analysis

(I) - (III) (No change.)

(IV) Lewisite metabolites in urine (2-chlorvinylarsonous acid (CVAA) and 2-chlorovinylarsonic acid (CVAOA), liquid chromatography, inductively coupled plasma mass spectrometry (LC-ICP-MS)--$157.59.

(V) [~~(IV)~~] Metabolic Toxin Panel (monochloroacetate and monofluoro acetate in urine, LC/MS-MS)--$93.38.

(VI) [~~(V)~~] Metals in blood (mercury, lead, cadmium), inductively coupled plasma mass spectrometry (ICP/MS)--$194.64.

(VII) [~~(VI)~~] Metals in urine (antimony, barium, beryllium, cadmium, cesium, cobalt, lead, molybdenum, platinum, titanium, tungsten, uranium), ICP/MS--$173.25.

(VIII) [~~(VII)~~] Organophosphorus nerve agent, LC/MS-MS--$81.28.

(IX) [~~(VIII)~~] Tetramine, gas chromatography/mass selective detector (GC/MSD)--$183.05.

(X) [~~(IX)~~] Tetranitormethane metabolite in urine (4-hydroxy-2-nitrophenylacetic acid (HNPAA)), liquid chromatography, tandem mass spectrometry (LC/MS-MS)--$62.21.

(XI) [~~(X)~~] Volatile organic compounds in blood, GC/MS--$124.85

(C) Mycobacteriology/mycology.

(i) Acid fast bacilli (AFB).

(I) Clinical specimen, AFB isolation and identification.

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

(-e-) Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex--$166.70 [~~$197.41~~].

(-f-) - (-g-) (No change.)

(II) (No change.)

(ii) - (iv) (No change.)

(v) Mycobacterium tuberculosis (M. tuberculosis) complex drug susceptibility.

(I) - (III) (No change.)

(IV) MGIT drug susceptibility test, primary panel--$115.05.

(V) MGIT PZA susceptibility test--$77.17.

(D) (No change.)

(E) Serology.

(i) (No change.)

[~~(ii) Aspergillus--$84.13.~~]

(ii) [~~(iii)~~] *Brucella*--$74.52.

(iii) [~~(iv)~~] Cat scratch fever *(Bartonella)*--$171.30.

(iv) [~~(v)~~] Cytomegalovirus (CMV):

(I) IgG--$23.23 [~~$399.97~~]; and

(II) IgM--$24.26 [~~$161.02~~].

(v) [~~(vi)~~] *Ehrlichia* indirect fluorescent antibody (IFA)--$174.20.

[~~(vii) Fungus:~~]

[~~(I) fungal identification (blastomycosis, coccidioidomycosis, histoplasmosis)--$142.05; and~~]

[~~(II) fungal panel (blastomycosis, coccidioidomycosis, histoplasmosis)--$130.55.~~]

(vi) [~~(viii)~~] Hantavirus IgG/IgM--$362.05.

(vii) [~~(ix)~~] Hepatitis A:

(I) IgM--$44.04 [~~$317.74~~]; and

(II) total--$34.45 [~~$219.60~~].

(viii) [~~(x)~~] Hepatitis B:

(I) core antibody--$36.06 [~~$143.90~~];

(II) core IgM antibody--$44.75 [~~$295.64~~];

(III) surface antibody (Ab)--$28.34 [~~$103.84~~]; and

(IV) surface antigen (Ag)--$18.47 [~~$51.45~~].

(ix) [~~(xi)~~] Hepatitis BeAb--$109.20.

(x) [~~(xii)~~] Hepatitis BeAg--$195.14.

(xi) [~~(xiii)~~] Hepatitis C (HCV)--$25.68.

(xii) [~~(xiv)~~] Human immunodeficiency virus (HIV):

[~~(I) HIV 1, 2, plus 0 screen--$11.40;~~]

(I) [~~(II)~~] serum, multi-spot--$40.74; and[~~.~~]

(II) HIV Combo Ag/Ab EIA--$7.90.

(xiii) [~~(xv)~~] Human immunodeficiency virus-1 (HIV-1):

(I) enzyme immunoassay (EIA) Dried Blood Spots (DBS)--$14.32;

(II) enzyme immunoassay (EIA) oral fluid--$69.99;

(III) Nucleic acid amplification test (NAAT)--$7.79;

(IV) western blot serum--$277.23;

(V) western blot DBS--$277.23; and

(VI) western blot oral--$324.71.

[~~(xvi) Legionella--$168.42.~~]

(xiv) [~~(xvii)~~] Lyme *(Borrelia)* IgG/IgM Panel--$706.25.

(xv) [~~(xviii)~~] Measles, mumps, rubella - *Varicella zoster* virus (MMR-VCV) Magnetic Immunoassay (MIA)--$345.63.

(xvi) [~~(xix)~~] Mumps:

(I) epidemic parotitis IgG--$22.62 [~~$154.46~~]; and

(II) epidemic parotitis IgM--$251.96.

(xvii) [~~(xx)~~] Q-Fever--$234.97.

(xviii) [~~(xxi)~~] QuantiFERON (tuberculosis serology)--$53.66 [~~$84.45~~].

(xix) [~~(xxii)~~] *Rickettsia* panel (includes: Rocky Mountain spotted fever and typhus)--$134.14.

(xx) [~~(xxiii)~~] Rubella:

(I) IgM--$24.77 [~~$329.37~~]; and

(II) screen--$22.33 [~~$24.13~~].

(xxi) [~~(xxiv)~~] Rubeola:

(I) IgM--$210.24; and

(II) screen [~~Screen~~] (IgG)--$21.35 [~~$165.16~~].

(xxii) [~~(xxv)~~] Schistosoma enzyme immunoassay (EIA)--$134.49.

(xxiii) [~~(xxvi)~~] Strongyloides [~~Strongyloide~~] enzyme immunoassay (EIA)--$73.45.

(xxiv) [~~(xxvii)~~] Syphilis:

(I) Confirmation fluorescent treponemal antibody absorbed (FTA-ABS)--$80.20;

(II) Confirmation particle agglutination (TP-PA)--$27.02; [~~and~~]

(III) Rapid plasma reagin (RPR):

(-a-) screen (qualitative)--$2.89; and

(-b-) titer (quantitative)--$12.88; and[~~.~~]

(IV) Screening, IgG--$7.57.

(xxv) [~~(xxviii)~~] Toxoplasmosis--$23.23 [~~$357.49~~].

(xxvi) [~~(xxix)~~] Tularemia *(Francisella tularensis)*--$54.53.

(xxvii) [~~(xxx)~~] *Varicella zoster* virus (VZV) [~~(VCV)~~]--$19.70 [~~$345.63~~].

(xxviii) [~~(xxxi)~~] *Yersinia pestis* (Plague), serum--$237.18.

(F) Virology.

(i) (No change.)

(ii) Arbovirus identification, PCR:

(I) (No change.)

(II) St. Louis Encephalitis (SLE)--$60.18; [~~and~~]

(III) Western Equine Encephalitis (WEE)--$60.41; and[~~,~~]

(IV) West Nile virus--$57.87.

(iii) - *(iv)* (No change.)

(v) Culture:

(I) Supplemental Cell Culture [~~clinical~~]--$135.46; and

(II) reference--$96.66.

(vi) Dengue, real-time PCR--$215.52.

(vii) [~~(vi)~~] Echovirus, DFA--$115.80.

(viii) [~~(vii)~~] Electron microscopy (includes observation, electron microscopy and photography)--$527.91.

(ix) [~~(viii)~~] Enterovirus:

(I) DFA--$162.96; and

(II) PCR--$393.27.

(x) [~~(ix)~~] *Herpes simplex virus* 1 and 2, identification, DFA--$96.52.

(xi) Influenza.

(I) [~~(x)~~] Influenza A/B identification, DFA--$54.02.

(II) [~~(xi)~~] Influenza surveillance with culture [~~Influenza, culture~~]--$248.00.

(III) Influenza pyrosequencing for antiviral resistance--$13.11.

(IV) [~~(xii)~~] Influenza surveillance without culture (typing, PCR)--$131.32 [~~$248.00~~].

(xii) [~~(xiii)~~] Norovirus (Norwalk-like virus) PCR--$55.77.

(xiii) Measles, real-time PCR--$126.83.

(xiv) Mumps, real-time PCR--$127.83.

(xv) Respiratory viral panel, PCR--$167.13.

(xvi) [~~(xiv)~~] Rotovirus, PCR--$55.75.

(xvii) [~~(xv)~~] Viral agent:

(I) Viral isolation, clinical--$172.70;

(II) indirect fluorescent antibody (IFA) detection, other--$147.83; and

(III) indirect fluorescent antibody (IFA) detection, respiratory--$95.34.

(xviii) [~~(xvi)~~] Viral molecular sequencing--$400.65.

(xix) [~~(xvii)~~] Virus detection hemadsorption--$42.18.

(xx) [~~(xviii)~~] Virus isolation, mouse inoculation--$1029.50.

(xxi) [~~(xix)~~] Virus typing, hemaglutination inhibition--$67.49.

(b) Tests performed on clinical specimens, South Texas Laboratory. Specimens that must be sent to a reference lab for testing will be billed at the reference laboratory price plus a $3.00 handling fee.

(1) Bacteriology.

(A) - (C) (No change.)

(D) Gram Stain--$8.06.

(E) [~~(D)~~] KOH exam except for skin, hair nails--$7.85.

(F) [~~(E)~~] Wet mount, vaginal--$9.14.

(G) Urine culture--$11.59.

(2) Clinical Chemistry.

(A) Alanine Amino Transferase (ALT)--$1.34.

(B) [~~(A)~~] Albumin, serum, urine or other source--$1.27.

(C) [~~(B)~~] Alkaline phosphatase--$1.37.

(D) [~~(C)~~] Amylase, serum--$7.37.

(E) [~~(D)~~] Aspartate aminotransferase (AST)--$1.32.

(F) Bilirubin, direct--$1.69.

(G) [~~(E)~~] Bilirubin, total--$1.30.

(H) Bilirubin, total and direct profile--$2.44.

(I) [~~(F)~~] Blood urea nitrogen (BUN)--$1.48.

(J) [~~(G)~~] Calcium--$1.64.

(K) [~~(H)~~] Carbon dioxide (CO2)--$1.35.

(L) [~~(I)~~] Chloride, serum--$1.35.

(M) [~~(J)~~] Cholesterol:

(i) total--$1.36;

(ii) High-density lipoprotein (HDL)--$1.37; and

(iii) Low-density lipoprotein (LDL)--$2.20.

(N) [~~(K)~~] Creatine kinase (CK) assay--$2.79.

(O) [~~(L)~~] Creatinine assay--$1.30.

(P) [~~(M)~~] Electrolyte panel--includes [~~anion gap (calculated),~~] CO2, chloride, potassium, and sodium--$2.83.

(Q) [~~(N)~~] Gamma-glutamyl transferase (GGT)--$3.90.

(R) [~~(O)~~] Glucose:

(i) Glucose--$1.34;

(ii) [~~(i)~~] Glucose tolerance test, 2 hour--$1.37; and

(iii) [~~(ii)~~] postprandial, 0 and 2 hours--$1.34.

(S) [~~(P)~~] Hepatic function panel--includes Alanine phosphatase (ALT), albumin, alkaline phosphatase, AST, bilirubin (direct and total), and protein (total)--$2.47.

(T) [~~(Q)~~] Hemoglobin A1C--$10.37.

(U) [~~(R)~~] Iron binding capacity, total--$8.55.

(V) [~~(S)~~] Iron, total--$7.08.

(W) [~~(T)~~] Lactic acid dehydrogenase (LDH)--$8.17.

(X) [~~(U)~~] Lipase--$20.43.

(Y) [~~(V)~~] Lipid profile panel--includes cholesterol, HDL, LDL, and triglycerides--$8.84.

(Z) [~~(W)~~] Magnesium--$7.82.

(AA) [~~(X)~~] Metabolic panels:

(i) basic panel--includes calcium, carbon dioxide (CO2), chloride, creatinine, glucose, potassium, sodium and blood urea nitrogen (BUN)--$3.65; and

(ii) comprehensive panel--includes alanine amino transferase (ALT), albumin, alkaline phosphatase, AST, bilirubin (total), calcium, CO2, chloride, creatinine, glucose, potassium, protein (total), sodium, and BUN--$6.39.

(BB) [~~(Y)~~] Phosphorus--$11.56.

(CC) [~~(Z)~~] Potassium--$1.35.

(DD) [~~(AA)~~] Protein, total--$1.41.

(EE) [~~(BB)~~] Renal function panel--includes albumin, glucose, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN--$18.13.

(FF) [~~(CC)~~] Sodium--$1.35.

(GG) [~~(DD)~~] Triglycerides--$1.36.

(HH) [~~(EE)~~] Tuberculosis panel--includes-ALT, alkaline phosphatase, AST, bilirubin (total), cholesterol, creatinine, GGT, BUN, and uric acid (blood)--$10.36.

(II) [~~(FF)~~] Uric acid--$4.07.

(3) Emergency Preparedness.

(A) Biological Threat reference culture--$198.28.

(B) Definitive identification.

(i) *Bacillus anthracis*--$145.72.

(ii) Brucella species--$214.30.

(iii) Burkholderia--$221.62.

(iv) Francisella tularensis--$107.07.

(v) *Yersinia pestis*--$313.47.

(vi) Unknown biological threat agent--$220.08.

(C) Food samples.

(i) *Bacillus anthracis*--$23.77.

(ii) Brucella Species--$25.77.

(iii) E.Coli 0157:H7--$7.15.

(iv) Francisella--$17.20.

(v) Listeria--$21.30.

(vi) Salmonella--$19.05.

(vii) *Yersinia pestis*--$313.47.

(D) PCR.

(i) *Bacillus anthracis*--$58.41.

(ii) Brucella--$58.41.

(iii) Burkholderia--$58.41.

(iv) *Francisella tularensis*--$58.41.

(v) Influenza--$51.26;

(vi) Influenza A--$53.63;

(vii) Influenza A/H5--$125.00;

(viii) Multiple Agent Panel--$169.39;

(ix) Ricin--$150.00; and

(x) Yersinia pestis--$58.41.

(4) [~~(3)~~] Hematology.

(A) CBC (complete blood count) with smear review--$9.11.

(B) CBC complete, automated with differential--$1.51.

(C) Differential, manual--$9.89.

(D) Hematocrit--$6.01.

(E) Hemoglobin, total--$6.01.

(F) Peripheral Smear Review--$7.59.

(G) [~~(F)~~] Sedimentation rate--$11.38.

(5) [~~(4)~~] Immunology.

(A) Pregnancy test:

(i) serum--$4.40; and

(ii) urine--$4.24.

(B) Rheumatoid factor--$4.73.

(6) [~~(5)~~] Microbiology.

(A) Mycobacteriology, Acid fast bacillus (AFB).

(i) Concentration--$4.31.

(ii) Culture, any source--$49.89.

(iii) Drug susceptibility studies:

(I) conventional susceptibility (each drug)--$14.06; [~~$36.45; and~~]

(II) MGIT susceptibility (each drug)--$43.47; and [~~$92.69.~~]

(III) MGIT susceptibility (each drug) PZA--$92.69.

(iv) Identification of AFB isolate, DNA probe--$44.63.

(v) [~~(iv)~~] Identification, referred isolates, DNA probe--$44.63.

(vi) [~~(v)~~] Smear only--$5.09.

(B) Parasitology, ova and parasites (concentration and trichrome stain)--$67.17.

(C) Serology, syphilis.

(i) Rapid plasma reagin (RPR):

(I) screen (qualitative)--$7.99; and

(II) titer (quantitative)--$7.99.

(ii) Confirmation particle agglutination (TP-PA)--$9.30.

(D) Wet mount, vaginal--$9.14.

(7) [~~(6)~~] Special chemistry.

(A) Ferritin--$22.31.

(B) Follicle simulating hormone (FSH)--$15.10.

(C) Leuteinizing hormone (LH)--$17.83.

(D) Prolactin--$18.07.

(E) Prostate specific antigen (PSA), total--$27.90.

(F) Thyroxine (T4), free--$10.89.

(G) Thyroxine (T4), total--$35.53.

(H) Thyroid Hormone (T3) uptake--$23.67.

(I) Thyroid stimulating hormone (TSH), prenatal--$9.41.

(J) Tri-iodothyronine (T3), free--$19.10.

[~~(F) Thyroxin (T4), free, prenatal--$35.53.~~]

[~~(G) Thyroid stimulating hormone (TSH), prenatal--$9.41.~~]

[~~(H) Tri-iodothyronine (T3) uptake, total, prenatal--$19.10.~~]

(8) [~~(7)~~] Urinalysis.

(A) Creatinine clearance test--$12.00.

(B) Protein, total, 24 hour--$5.82.

(C) Microscopy with urinalysis (UA)--$32.25.

(D) Random Urine/Creatinine Profile--$6.44.

(E) [~~(D)~~] Urinalysis, no reflex--$5.24.

(F) [~~(E)~~] Urine microalbumin, random--$5.69.

(G) Urine Microscopic Analysis--$5.54.

[~~(c) Tests performed on clinical specimens, Women's Health Laboratory.~~]

[~~(1) Bacteriology.~~]

[~~(A) Bacterial culture, routine:~~]

~~*(i)* body fluid--$33.19;~~

~~*(ii)* eye, ear, and nasopharynx (np)--$36.67;~~

~~*(iii)* sputum/trach (tracheostomy)--$35.35;~~

~~*(iv)* stool--$37.35;~~

~~*(v)* throat--$26.57;~~

~~*(vi)* urine--$11.03;~~

~~*(vii)* urogenital--$40.14; and~~]

~~*(viii)* wound--$92.82.~~]

[~~(B) Fecal occult blood--$32.65.~~]

[~~(C) Fungus.~~]

~~*(i)* clinical, definitive identification:~~]

~~*(I)* mold, nocardia--$87.80; and~~]

~~*(II)* yeast identification--$49.28.~~]

~~*(ii)* reference culture:~~]

~~*(I)* genital/urine--$49.46;~~]

~~*(II)* routine with KOH--$29.44;~~]

~~*(III)* skin, hair, nail--$71.85; and~~]

~~*(IV)* tissue with KOH--$86.85.~~]

[~~(D) Genetic probe.~~]

~~*(i)* Group B streptococcus--$18.97.~~]

~~*(ii)* Gonorrhea/Chlamydia (GC/CT):~~]

~~*(I)* amplified GenProbe--$19.72; and~~]

~~*(II)* CT and GC, DNA--$19.72.~~]

[~~(E) Gram stain smear with fecal WBC:~~]

~~*(i)* fecal leukocytes--$6.97; and~~]

~~*(ii)* gram stain--$11.20.~~]

[~~(F) KOH prep--$6.88.~~]

[~~(G) Wet mount, vaginal--$18.05.~~]

[~~(2) Cytology.~~]

[~~(A) Pap smear:~~]

~~*(i)* conventional--$13.28;~~]

~~*(ii)* liquid based--$25.45; and~~]

~~*(iii)* physician interpretation--$5.82.~~]

[~~(B) Non-gynecological (non-GYN) cytology--$66.78.~~]

[~~(3) Clinical chemistry.~~]

[~~(A) Albumin, serum, urine or other source--$1.27.~~]

[~~(B) Alkaline phosphatase--$1.37.~~]

[~~(C) Alanine aminotransferase (ALT)--$6.50.~~]

[~~(D) Amylase, serum--$7.37.~~]

[~~(E) AST--$1.32.~~]

[~~(F) Beta-human chorionic gonadotropin (beta-HCG) pregnancy test:~~]

~~*(i)* qualitative--$9.15; and~~]

~~*(ii)* quantative--$27.18.~~]

[~~(G) Blood typing:~~]

~~*(i)* indirect COOMBS (AB screen)--$26.31; and~~]

~~*(ii)* ABO RH--$15.36.~~]

[~~(H) BUN--$1.48.~~]

[~~(I) CO2--$1.35.~~]

[~~(J) Chloride, serum--$1.35.~~]

[~~(K) Cholesterol, total--$1.36.~~]

[~~(L) Cord blood panel--includes antihuman globulin tests (COOMBS); direct, each antiserum, blood typing ABO and RH (D)--$10.83.~~]

[~~(M) Creatine Kinase--$2.79~~]

[~~(N) Creatinine:~~]

[(i) ~~24 hour urine--$16.37; and~~]

[(ii) ~~24 hour urine creatinine clearance--$27.66.~~]

[~~(O) Electrolyte panel--includes anion GAP (calculated) CO2, chloride, potassium, sodium--$2.83.~~]

[~~(P) Glucose:~~]

[(i) ~~one half hour--$5.96;~~]

[(ii) ~~one hour--$6.00;~~]

[(iii) ~~2 specimens--$9.27;~~]

[(iv) ~~3 specimens--$12.54;~~]

[(v) ~~4 specimens--$15.84;~~]

[(vi) ~~fasting--$5.98;~~]

[(vii) ~~gestational, 2 specimens--$9.27;~~]

[(viii) ~~postprandial, 0 and 2 hours--$1.34; and~~]

[(ix) ~~random--$5.96.~~]

[~~(Q) Hematology.~~]

[(i) ~~CBC automated, with differential--$1.51.~~]

[(ii) ~~CBC automated, without differential:~~]

[(I) ~~CBC--$12.13;~~]

[(II) ~~eosinophil screen--$6.63; and~~]

[(III) ~~hematocrit--$6.01.~~]

[(iii) ~~CBC with manual differential--$9.99.~~]

[(iv) ~~Hemoglobin and hematocrit--$6.78.~~]

[(v) ~~Hemoglobin, total--$6.01.~~]

[~~(R) Hepatic function panel--includes ALT, albumin, alkaline phosphatase, AST, bilirubin (direct and total), and protein (total)--$2.47.~~]

[~~(S) High risk panel--includes cholesterol, glucose, and triglycerides--$9.19.~~]

[~~(T) Lipid profile panel--includes cholesterol, HDL and triglycerides--$8.84.~~]

[~~(U) Liver function panels:~~]

[(i) ~~liver function test (LFT) 4--includes ALT, alkaline phosphatase, AST and bilirubin (total)--$15.43; and~~]

[(ii) ~~LFT 6--includes ALT, alkaline phosphatase, AST, bilirubin(total), creatinine, and BUN--$12.71.~~]

[~~(V) LDH, total--$19.95.~~]

[~~(W) Metabolic panels:~~]

[(i) ~~basic panel--includes calcium, CO2, chloride, creatinine, glucose, potassium, sodium and BUN--$3.65; and~~]

[(ii) ~~comprehensive panel--includes ALT, albumin, alkaline phosphatase, AST, bilirubin (total), calcium, CO2, chloride, creatinine, glucose, potassium, protein (total), sodium, and BUN--$5.38.~~]

[~~(X) Obstetric (OB) panels:~~]

[(i) ~~OB--includes ABO RH, antibody screen, RBC, hepatitis B surface Ag, RPR, and rubella antibody--$80.18; and~~]

[(ii) ~~OB with CBC--includes ABO HR, antibody screen RBC, CBC with differential, hepatitis B surface Ag, RPR and rubella antibody--$91.58.~~]

[~~(Y) Phosphorus--$11.56.~~]

[~~(Z) Potassium, urine--$15.49.~~]

[~~(AA) Protein:~~]

[(i) ~~total--$1.41; and~~]

[(ii) ~~total, 24 hour urine--$13.34.~~]

[~~(BB) Sodium--$1.35.~~]

[~~(CC) Triglycerides--$1.36.~~]

[~~(DD) Uric acid--$4.07.~~]

[~~(EE) Urinalysis:~~]

[(i) ~~with microscopic examination--$32.25;~~]

[(ii) ~~with microscopic examination and reflex culture--$20.74;~~]

[(iii) ~~bilirubin ictotest confirmation--$3.74;~~]

[(iv) ~~chemstrip UGK--$2.37;~~]

[(v) ~~protein SSA confirmation--$2.49; and~~]

[(vi) ~~urine analysis without microscopic examination--$17.00.~~]

[~~(4) Mycobacteriology.~~]

[~~(A) Acid fast bacillus (AFB).~~]

[(i) ~~Anaerobic or aerobic identification--$30.77.~~]

[(ii) ~~Culture, Accuprobe--$62.46.~~]

[(iii) ~~Culture and smear, any source--$59.14.~~]

[(iv) ~~Drug susceptibility studies direct and indirect, each drug--$47.58.~~]

[(v) ~~Smear only--$5.09.~~]

[~~(B) Broth dilutions, minimum inhibitory concentration (MIC):~~]

[(i) ~~BACTEC--$140.91; and~~]

[(ii) ~~MGIT--$98.20.~~]

[~~(C) Rifabutin, agar susceptibility--$47.57.~~]

[~~(5) Serology.~~]

[~~(A) Hepatitis B surface antigen (Ag)--$14.68.~~]

[~~(B) Human papillomavirus (HPV)--$68.68.~~]

[~~(C) Human immunodeficiency virus-1 (HIV-1):~~]

[(i) ~~enzyme immunoassay (EIA) DBS--$16.07; and~~]

[(ii) ~~enzyme immunoassay (EIA) oral fluid--$16.07.~~]

[~~(D) Rubella, IgG--$16.37.~~]

[~~(E) Syphillis.~~]

[(i) ~~Rapid plasma reagin (RPR):~~]

[(I) ~~screen (qualitative)--$7.99; and~~]

[(II) ~~titer (quantitative)--$7.99.~~]

[(ii) ~~Confirmation particle agglutination (TP-PA)--$9.30.~~]

[~~(6) Surgical pathology:~~]

[~~(A) level I--$19.52;~~]

[~~(B) level II--$45.91;~~]

[~~(C) level III--$45.24;~~]

[~~(D) level IV--$37.29; and~~]

[~~(E) level V--$89.29.~~]

(c) [~~(d)~~] Non-clinical testing, Austin Laboratory.

(1) *Legionella,* culture--$265.48.

(2) Bat identification--$3.52.

(3) Entomology:

(A) insect identification--$20.86;

(B) mosquito identification for surveillance--$17.66; and

(C) mosquito larvae identification--$6.04.

(4) Food.

(A) Bacterial identification.

(i) Bacillis:

(I) identification--$101.16; and

(II) enumeration, most probable number (MPN)--$245.53.

(ii) Campylobacter identification--$145.40.

(iii) Clostridium perfringens identification--$217.06.

(iv) Cronobacter sakazakii--$115.17.

(v) Escherichia coli.

(I) [~~(iv)~~] *E.coli* 0157 identification--$121.52.

(II) Non-0157 STEC--$295.02.

(III) [~~(v)~~] *E.coli* enumeration (MPN)--$180.97.

(vi) Listeria identification--$150.75.

(vii) Salmonella identification--$66.07.

(viii) Shigella identification--$119.40.

(ix) Staphyloccus identification--$127.28.

(x) Yersinia identification--$62.48.

(B) *Staphylococcus* enterotoxin detection--$90.80.

(C) Yeast and mold enumeration (MPN)--$128.50.

(D) Standard plate count--$67.38.

(5) Milk and dairy.

(A) Aflatoxin--$65.63.

(B) Bacterial counts:

(i) coliform count, milk--$33.97;

(ii) coliform count, containers--$41.28;

(iii) standard plate count, milk--$22.14; and

(iv) standard plate count, container--$44.33.

(C) Dairy water--$16.19.

(D) Freezing point--$26.59.

(E) Growth inhibitors.

(i) Charm SL-6 beta-lactam test--$81.14.

(ii) Charm SLBL beta-lactam test--$58.91.

(iii) Charm II sulfonamide test--$51.69.

(iv) Charm II tetracycline test--$55.15.

(v) Delvo test--$25.60.

(F) Phosphatase--$37.82.

(G) Somatic cell counts.

(i) Direct microscope somatic cell count (DMSC):

(I) bovine (cow)--$50.83; and

(II) caprine (goat)--$58.54.

(ii) Optical somatic cell count (OSCC):

(I) bovine (cow)--$51.05; and

(II) caprine (goat)--$51.05.

(6) *Yersinia pestis* (plague), Nobuto--$8.57.

(7) Shellfish.

(A) Bay water--$25.76.

(B) Brevetoxin identification--$242.95.

(C) *E.coli,* identification and enumeration (MPN)--$151.43.

(D) Standard plate count--$67.38.

(E) *Vibrio* identification--$211.47.

(F) *Vibrio* identification and enumeration (MPN)--$478.70.

(8) Virology.

(A) Arbovirus:

(i) culture from mosquito--$44.25;

(ii) Eastern Equine Encephalitis (EEE), mosquitoes, PCR--$60.39;

(iii) St. Louis Encephalitis (SLE), mosquitoes, PCR--$60.18; [~~and~~]

(iv) Western Equine Encephalitis (WEE), mosquitoes, PCR--$60.41; and [.]

(v) West Nile Virus (WNV), mosquitoes, PCR--$57.87.

(B) Rabies:

(i) detection, DFA--$72.99;

(ii) detection, DFA, cell culture--$158.77;

(iii) molecular typing--$181.05; and

(iv) monoclonal typing--$31.19.

(9) Water.

[~~(A) Bottled water--$71.74.~~]

[~~(B) Fecal coliforms, multiple tube fermentation (MTF)--$182.01.~~]

(A) [~~(C)~~] Heterotrophic plate count (HPC) bacteria in water (Simplate)--$84.86.

(B) [~~(D)~~] Potable water--$16.19.

(C) [~~(E)~~] Surface water, (MPN) (Quanti-tray)--$257.66.

[~~(F) Reagent water suitability--$60.26.~~]

(d) [~~(e)~~] Non-clinical testing, South Texas Laboratory, Water bacteriology, potable water--$8.82.

(e) [~~(f)~~] Service charges.

(1) Restocking fee for NBS specimen collection kit--$50.00.

(2) Thermometer calibration--$12.23.

(3) Shipping and handling fees:

(A) AFB--$50.20;

(B) Arbovirus reference sample--$96.66; and

(C) CDC reference virus isolation--$23.00.

(4) Specimen processing and storage--$25.00.

§73.55. Fee Schedule for Chemical Analyses.
Fees for chemical analyses and physical testing.

(1) Analysis of volatile organic compounds in air (charcoal tubes), National Institute for Occupational Safety and Health NIOSH method--$127.24.

(2) The following fees apply to analysis of drinking water [~~(including bottled water)~~] samples.

(A) - (B) (No change)

(C) Organic compounds:

(i) - (xi) (No change.)

(xii) trihalomethanes, EPA methods 502.2 or 524.2--$50.13; [~~and~~]

(xiii) trihalomethanes, EPA method 551.1--$43.91; and

(xiv) [~~(xiii)~~] volatile organic compounds VOCs by GC-MS, EPA method 542.2--$55.12.

(D) (No change.)

(3) The following fees apply to the analysis of food and food products.

(A) Inorganic analyses:

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

(x) gluten--$92.11;

(xi) [~~(x)~~] insect identification, Food and Drug Administration (FDA) Technical Bulletin #2 [~~Number 2~~]--$88.92;

(xii) [~~(xi)~~] meat protein, AOAC calculation--$5.34;

(xiii) [~~(xii)~~] moisture (total water), USDA M01 method--$63.00;

(xiv) [~~(xiii)~~] pH of food products, USDA PHM--$43.12;

(xv) [~~(xiv)~~] phosphate determination-(tri-poly-phosphate), USDA PHS1--$65.36;

(xvi) [~~(xv)~~] protein, total, USDA PRO1--$81.14;

(xvii) [~~(xvi)~~] salt, USDA SLT--$85.81;

(xviii) [~~(xvii)~~] soy protein concentrate, USDA SOY1 method--$53.21;

(xix) [~~(xviii)~~] soya, USDA SOY1 method--$53.21;

(xx) [~~(xix)~~] sulfite AOAC 980.17--$28.27; and

(xxi) [~~(xx)~~] water activity, AOAC method 978.18--$33.22.

(B) Metals analyses. A sample preparation fee applies to all food samples analyzed by ICP or ICP-MS techniques. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total analysis fee includes the sample preparation fees and the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) (No change.)

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 methods 7470A and 7471B--$37.90 [~~$192.35~~];

(II) - (III) (No change.)

(4) The following fees apply to the analysis of soil and solids.

(A) Metals analysis. A sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the sample preparation fees plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees. Determination of leachable metals in solid samples will require a solid leachate sample preparation procedure, as well as analysis of the leachate using non-potable water analytical methods. The total cost of the analysis will be the solid leachate sample preparation fee plus the required non-potable water preparation fee(s) and the per-element test(s).

(i) - (ii) (No change.)

(iii) Per-element fee:

(I) mercury, sediment, EPA SW-846 method 7471B--$37.90 [~~$194.22~~];

(II) - (III) (No change.)

(B) (No change.)

(5) The following fees apply to the analysis of tissue and vegetation samples. A tissue preparation (homogenization) fee applies to all seafood tissue samples analyzed for metals. The total analysis cost includes the tissue preparation fee, any analyte specific sample preparation fee, and the per-element or per-group test fee.

(A) Tissue preparation fees:

(i) fillets--$19.98 [~~$34.56~~]; and

(ii) (No change.)

(B) Metals analyses. A sample preparation fee applies to all tissue samples analyzed by ICP or ICP-MS. The total analysis

cost includes the per-element or per-group fee plus any required sample preparation fee:

(i) (No change.)

(ii) per-element fees:

(I) mercury, EPA method 7471B--$37.90 [~~$192.35~~];

(II) - (III) (No change.)

(C) (No change.)

(6) The following fees apply to the analysis of non-potable water.

(A) (No change.)

(B) Metals analysis. The following sample preparation fees apply to the analysis of non-potable water samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the required sample preparation fee(s) plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) (No change.)

(ii) Per-element fees:

(I) (No change.)

(II) single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C--$114.04 [~~$67.49~~]; and

(III) (No change.)

(C) (No change.)

(7) - (8) (No change.)

(9) Additional charges.

(A) - (F) (No change.)

(G) Composite storage fee--$19.23.

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 June 3, 2013.

TRD-201302252
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 776-6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.306

The Comptroller of Public Accounts proposes to amend §3.306, concerning sales of mobile offices, portable buildings, prefabricated buildings, and ready-built homes. The section is being amended to reflect policy clarification and amendments to the Texas Tax Code.

The title is being amended to reflect the addition of oilfield portable units due to statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011.

Subsection (a) is amended to add definitions for "bunkhouse," "contract for the improvement to realty," "house trailer," "manufactured home," "park model," "set up or installation," and "travel trailer or recreational vehicle"; to revise the definition of "office trailer" to conform more closely to the definition in §3.72 of this title (relating to Farm Machines, Timber Machines, and Trailers); to add a definition for an oilfield portable unit in order to implement statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011; to reflect statutory changes to the definition of "department" in Tex. Rev. Civ. Stat. art. 5221f (Tex. Occ. Code §1201) by House Bill 785, 74th Legislature, 1995; and to reflect current policy as to the definition of sales price pursuant to Tax Code, §151.007.

Subsection (b) is amended to reflect long-standing policy as to what is included in the sales price pursuant to Tax Code, §151.007; to add new topic headings for the various paragraphs; to add a new paragraph (2) to state that oilfield portable units are subject to sales and use tax in order to implement statutory changes to Tax Code, §151.308 and §152.001 by House Bill 3182, 82nd Legislature, 2011; and to combine original paragraph (3) with paragraph (4) relating to prefabricated buildings and ready-built homes under a single topic for reasons of readability.

Subsection (c) is amended to reflect long-standing policy as to the taxability of certain taxable services performed on manufactured homes as improvements to residential real property and tangible personal property.

Non-substantive changes have been made for conformity and consistency throughout the section.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying for taxpayers current statutory law and comptroller policy regarding manufactured housing. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.051, 151.007, 151.308 and 152.001.

§3.306. Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes.

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

(1) Bunkhouse--This term has the meaning given in §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

(2) Contract for the improvement to realty--A contract, as described in §3.347(a) of this title (relating to Improvements to Realty). Such a contract includes installation or set-up performed to permanently affix a structure defined in this section to real property.

(3) House trailer--This term has the meaning given in §3.72 of this title.

(4) Installation or set-up--Activities associated with either a contract for the improvement to real property or the temporary placement of a structure defined in this section, including, but not limited to, spotting the structure; preparing the foundation; connecting separate sections of the structure, if any; placing, blocking, leveling, and anchoring the structure; connecting sewer, water, electricity, and other utilities; and installing skirting, awnings, and steps.

(5) Manufactured home--This term has the meaning given in §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax).

(6) [~~(1)~~] Mobile office [~~Office~~]--A self-contained transportable structure built on a permanent chassis, with or without wheels, axles, and a towing device, that is [~~trailer~~] designed to be used as an office, sales outlet, or work place. A food and beverage concession trailer is an example of a towable structure designed to be used as a sales outlet or work place.

(7) Oilfield portable unit.

(A) A self-contained transportable structure built on a permanent chassis, with or without wheels, axles, and a towing device, designed to be used for temporary lodging or temporary office space that:

(i) does not require attachment to a foundation or real property to be functional;

(ii) is located exclusively upon, or immediately adjacent to, the lease premises or assigned acreage of an oil, gas, water disposal, or injection well located within an oil or gas lease, field, pooled unit, or unitized tract;

(iii) is used exclusively to provide sleeping accommodations, temporary office space, or any other temporary work space for employees, contractors, or other workers at an oil, gas, water disposal, or injection well; and

(iv) is not a travel trailer, camper trailer, or recreational vehicle.

(B) Examples of items that qualify as an oilfield portable unit when located and used exclusively as provided in this paragraph include, but are not limited to, a bunkhouse, trailer, semitrailer, park model, house trailer, and manufactured home. For more information regarding the taxation of travel trailers, camper trailers, and recreational vehicles, refer to §3.72 of this title.

(8) Park model--This term has the meaning given in §3.481 of this title.

(9) [~~(2)~~] Portable building--A self-contained transportable structure that does not require attachment to a foundation or to realty in order to be functional. An example of a portable building is a tool shed.

(10) [~~(3)~~] Prefabricated building--A structure, not designed to be a residential dwelling, built at a location other than its permanent site, and that is later transported in one or more sections and affixed to real property [~~realty~~].

(11) [~~(4)~~] Ready-built home--A structure that does not bear a label or decal issued by the Texas Department of Licensing and Regulation, the Texas Department of Housing and Community Affairs, or the U.S. Department of Housing and Urban Development, but that is designed to be a residential dwelling which is constructed, precut, partially assembled, or fabricated in whole or in part at a location other than the home site and subsequently [~~later~~] transported, in one or more sections, to the home site, where it is [~~and~~] assembled on a permanent foundation.

(12) Travel trailer or recreational vehicle--This term has the meaning given in §3.72 of this title.

(13) [~~(5)~~] The terms mobile home, ready-built home, prefabricated building, and portable building do not include a house trailer, as defined in and subject to the provisions of [~~Texas~~] Tax Code, Chapter 152, or a manufactured home, as defined in and subject to the provisions of [~~Texas~~] Tax Code, Chapter 158. See §3.72 of this title [~~(relating to Farm Machines, Timber Machines, and Trailers)~~] and §3.481 of this title [~~(relating to Imposition and Collection of Tax)~~].

(b) Application of the sales and use tax to mobile offices, oilfield portable units, portable buildings, prefabricated buildings, ready-built homes, and tangible personal property.

(1) Mobile offices. A sale, lease, or rental of a mobile office is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 of this title (relating to Transportation and Delivery Charges) and §3.294 of this title (relating to charges on Rental and Lease of Tangible Personal Property) [~~charges~~].

(2) Oilfield portable units. A sale, lease, or rental of an oilfield portable unit is subject to sales tax. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 and §3.294 of this title.

(A) An oilfield portable unit that ceases to be used exclusively as an oilfield portable unit, as required by this section, and that meets the definition of a motor vehicle, pursuant to Tax Code, §152.001(3), is subject to tax imposed by Tax Code, Chapter 152. Examples include bunkhouses, trailers, semitrailers, park models, or house trailers. For more information regarding the application of the Motor Vehicle Sales Tax to oilfield portable units, refer to §3.72(c) of this title.

(B) The lease or rental of a manufactured home as defined in §3.481 of this title that ceases to be used exclusively as an oilfield portable unit as required by this section is subject to hotel occupancy tax as provided under Tax Code, Chapter 156.

(3) [~~(2)~~] Portable buildings. A sale, lease, or rental of a portable building is a taxable sale of tangible personal property. Sales tax is due on the total sales price charged by the seller, including charges for delivery and installation or set-up, even if separately stated on the invoice issued to the purchaser. See §3.303 and §3.294 of this title [~~charges~~].

(4) Prefabricated buildings and ready-built homes.

(A) [(3)] A contract to sell a prefabricated building or a ready-built home is considered a contract for an improvement to real property [realty] when the seller is required to build, transport, and affix the structure to a permanent site. See §3.347 of this title [(relating to Improvements to Realty)]. If the contract requires the seller to perform installation or set-up services [such as preparing the foundation, plumbing, sewer hookup, septic tank preparation, supporting, blocking, or leveling], the seller's sales tax responsibilities are determined by whether the contract is a lump-sum contract or a contract that separately states [separates] charges for materials and [from charges for] labor. See §3.291 of this title (relating to Contractors).

(B) [(4)] The sale of a ready-built home or a prefabricated building that is not at the time of sale affixed to its permanent site is a taxable sale of tangible personal property if sold to a person responsible for affixing the structure to real property [realty].

(5) Structures deemed to be tangible personal property. A sale of a structure that is affixed to real property [realty] is nonetheless a taxable sale of tangible personal property if the purchaser is obligated to remove the structure from its site.

(6) Tangible personal property affixed to real property. An "in-place" sale of items such as fixtures, machinery, and equipment is considered a sale of tangible personal property if the seller:

(A) is a lessee of the real property [estate] or structure [building] to which the items are affixed; and

(B) has the present right to remove the items either as trade fixtures or under the express terms of the lease. Sales tax is due on that portion of the total consideration allocable to the in-place items without regard to the fact of their physical attachment to real property.

(c) Application of limited sales and use tax to manufactured homes. [Parts and accessories added to manufactured housing by the retailer.]

(1) Limited sales or use tax is due on parts or accessories installed in a manufactured home by the retailer of the [in a] manufactured home, whether the home is sold alone or as part of a contract for the improvement to realty. See §3.291 of this title.

(A) [(1)] If the retailer sells the home for a lump sum amount that includes both the home and parts, the retailer should not collect limited sales or use tax on the lump sum charge. The retailer must pay limited sales or use tax on the parts at the time of purchase.

(B) [(2)] If the retailer separates the charge to the customer into one charge for the home and a separate charge for the additional parts, the retailer must collect limited sales or use tax on the amount charged for the parts. The retailer may issue a resale certificate in lieu of tax when purchasing the parts.

(C) [(3)] If a third party sells and installs the items, the installer's sales tax responsibilities are determined by whether the contract separates charges for materials from charges for labor. If the installer charges a lump-sum amount for materials and labor, the installer should not collect tax on the lump-sum charge, and the installer must pay limited sales or use tax on the parts at the time of purchase. If the installer separately states the charges for materials and labor, the installer must collect limited sales tax on the amount charged for the parts, and the installer may issue a resale certificate in lieu of tax when purchasing the parts. [See paragraphs (1) and (2) of this subsection.]

(2) A manufactured home affixed to real property, including placement on a foundation and/or supporting, blocking, leveling, securing, anchoring, and connecting multiple sections, is presumed to be an improvement to real property for sales and use tax purposes.

(3) Repair, remodeling, restoration and maintenance.

(A) Sales or use tax is not due on labor for the repair, remodeling, restoration, and maintenance of a manufactured home affixed to real property and used for residential purposes pursuant to §3.291 of this title. Residential use of a manufactured home occurs when the building is occupied as a home or residence by the owner or by a tenant who occupies the building under a contract for an express initial term of more than 29 consecutive days. Absent a contract, only the period exceeding 29 consecutive days will be considered residential use, when supported by valid documentation, such as receipts or canceled checks.

(B) Sales or use tax is due on the repair, remodeling, and restoration of a manufactured home affixed to real property and used for nonresidential purposes pursuant to §3.357 of this title (concerning Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(C) Sales or use tax is due on the repair, remodeling, restoration, and maintenance of a manufactured home temporarily affixed to real property pursuant to §3.292 of this title (relating to the Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). A manufactured home temporarily affixed to real property is deemed to be tangible personal property if the owner of the home is a lessee of the real property to which the home is affixed and is obligated to remove the home from the real property under the express terms of the lease without regard to the home's attachment to the real property. For example, a manufactured home used exclusively to provide sleeping accommodations for employees, contractors, or other workers at a construction site is temporarily affixed to the real property.

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 May 28, 2013.

TRD-201302176
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER T. MANUFACTURED HOUSING SALES AND USE TAX

34 TAC §3.481

The Comptroller of Public Accounts proposes amendments to §3.481, concerning imposition and collection of manufactured housing tax. The section is being amended to reflect policy clarification and amendments to the Tax Code, Texas Occupations Code, the Texas Local Government Code and the Texas Health and Safety Code.

The section title is being amended to more clearly identify the purpose of the section. In addition, the section has changes in form, style, wording, and organization to improve clarity and readability.

Subsection (a) is amended to implement a statutory change to Tax Code, §158.002, by House Bill 271, 69th Legislature, 1985,

which added to the definition of "manufactured home" the term "industrialized housing," as defined by Article 5221f-1 Vernon's Revised Civil Statutes 1985, and which added that a decal or label issued by the U.S. Department of Housing and Urban Development, the Texas Department of Housing and Community Affairs, or the Texas Department of Licensing and Regulation is required to be permanently affixed to each section or module; to reflect the statutory change in Article 5221f, Manufactured Housing Standards Act, that the transfer and installation of HUD-code manufactured homes are administered by the Texas Department of Housing and Community Affairs; to add a definition of the term "house trailer" to clarify the distinction between manufactured housing and certain trailers defined as motor vehicles and taxed under Tax Code, Chapter 152; to amend the definition of the term "park model" for clarity; to delete the term "modular home" because the term is replaced by the term "industrialized housing"; to reflect the statutory change to the definition of "retailer" in Occupations Code, Chapter 1201, relating to Manufactured Housing, by House Bill 2813, 77th Legislature, 2001; to add examples to the definition of "recreational vehicle"; and to substitute the word "section" for the word "provision" throughout the subsection for uniformity and consistency.

Subsection (b) is amended to add the word "consigned" to conform to the section and Tax Code, Chapter 158; to delete the dates "March 1, 1982," and "September 1, 1983," as no longer being relevant due to the passage of time; and to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency. Paragraph (2) is amended to reflect existing sales and use tax policy under Tax Code, Chapter 151 concerning manufactured homes and to delete wording no longer relevant due to the passage of time. New paragraph (3) is added to reflect existing sales and use tax policy under Tax Code, Chapter 151 concerning the repair, remodeling, restoration and maintenance of manufactured homes.

Subsection (c) is amended to delete the dates "September 1, 1983," and "March 1, 1982," as no longer being relevant due to the passage of time, and to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency.

Subsection (d) is amended to substitute the phrase "this state" for the word "Texas" throughout the subsection for uniformity and consistency.

Subsection (e) is amended in recognition of the fact that federal land bank associations and farm credit banks are treated the same as federal credit unions in the United States Code; to reflect a statutory change to Local Government Code, Chapter 501, relating to Development Corporations and Health and Safety Code, Chapter 221, relating to the Health Facilities Development Act; and to substitute for the paragraph concerning adopting a certificate by reference and obtaining copies of the certificate a new paragraph with the comptroller's Internet address for ordering forms.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying for taxpayers current statutory law and comptroller policy regarding manufactured housing. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, 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 Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§158.002, 158.101 and 158.154(c).

§3.481. Imposition and Collection of Manufactured Housing Tax.

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

(1) Charitable or eleemosynary organization--A nonprofit organization devoting all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this section [~~provision~~]. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services which are often charitable in nature, these types of organizations do not meet the requirements for exemption under this section [~~provision~~].

(2) Educational organization--A nonprofit organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and which has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this section [~~provision~~], if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this section [~~provision~~] if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Entities that are defined in [~~the~~] Education Code,

§61.003, as "institutions of higher education" are recognized for exemption under this section [provision]. Included in the definition of "institutions of higher education" are state and private universities and colleges.

(3) Exempt use--A use to promote the purpose for which an exempt organization was created.

(4) House trailer--A trailer designed for human habitation, including a park model as defined in this section. The term does not include mobile offices as defined in §3.306 of this title (relating to Sales of Mobile Offices, Oilfield Portable Units, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes); manufactured homes as defined in this section; or portable buildings, prefabricated buildings, and ready-built homes, as defined in §3.306 of this title.

(5) [(4)] HUD-code manufactured home--A structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;[,] transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet;[, is] built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities;[,] and which includes the plumbing, heating, air conditioning, and electrical systems.

(6) Industrialized housing--A residential structure that is designed for the occupancy of one or more families; constructed in one or more modules, or one or more modular components built at a location other than the home site; designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system; and that includes the structure's plumbing, heating, air conditioning, and electrical systems. Industrialized housing does not include a residential structure that exceeds three stories or 49 feet in height; housing constructed of a sectional or panelized system that does not use a modular component; or a ready-built home constructed in a manner in which the entire living area is contained in a single unit or section at a temporary location for the purpose of selling and moving the home to another location.

(7) [(5)] Manufactured home--A HUD-code manufactured home that has a label or decal issued by the U.S. Department of Housing and Urban Development and the Texas Department of Housing and Community Affairs permanently affixed to each section, industrialized housing that has a label or decal issued by the Texas Department of Licensing and Regulations permanently affixed to each module or modular component, or[,] a mobile home[, or modular home]. A manufactured home does not include a recreational vehicle, park model, or house trailer, as those terms are defined in this section. Further, the term [it] does not include a structure [which is not] designed as a residence and [if] constructed since June 15, 1976, that lacks [would not have been required to have affixed] a label or decal issued by the U.S. Department of Housing and Urban Development and the Texas Department of Housing and Community Affairs or by the Texas Department of Licensing and Regulations permanently affixed to each section, module, or modular component.

(8) [(6)] Manufacturer--Any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within this state.

(9) [(7)] Mobile home--A structure constructed before June 15, 1976;[,] transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet;[, is] built on a permanent chassis; [and] designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities;[,] and that includes the plumbing, heating, air conditioning, and electrical systems.

[(8) Modular home--A dwelling constructed in one or more modules at a location other than the homesite, or constructed utilizing one or more modular components, and designed to be used as a permanent residence when the modular components or modules are transported to the homesite and joined together or erected and installed on a permanent foundation. The term includes the plumbing, heating, air-conditioning, and electrical systems. "Modular home" does not include:]

[(A) housing constructed of sectional or panelized systems not utilizing modular components;]

[(B) a ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location; or]

[(C) any dwelling constructed in modules incorporating concrete as the predominant structural component.]

(10) [(9)] New manufactured home--One that has not been subject to a retail sale.

(11) [(10)] Park model [or house trailer]--A trailer [structure built on a permanent chassis and] designed to be used for human habitation, [as a dwelling] with or without a permanent foundation, when connected to the required utilities, and that:

(A) [which] is less than eight body feet in width and 40 body feet in length in the traveling mode;[, and less than 320 square feet when installed or erected on site.]

(B) includes the plumbing, heating, air conditioning and electrical systems; and

(C) is not required to be affixed with a label or decal issued by the U.S. Department of Housing and Urban Development and by the Texas Department of Housing and Community Affairs.

(12) [(11)] Person--An individual, partnership, company, corporation, association, or other group, however organized.

(13) [(12)] Recreational vehicle--A vehicle which is self-propelled or designed to be towed by a motor vehicle, but is not designed to be used as a permanent dwelling, and which contains [containing] plumbing, heating, and electrical systems that may be operated without connection to outside utilities. Examples include, but are not limited, to travel trailers, camper trailers, and motor homes. For information on the taxability of recreational vehicles, see §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

(14) [(13)] Religious organization--A nonprofit organization that is an organized group of people regularly meeting for the primary purpose of holding, conducting and sponsoring religious worship services, according to the rites of their sect. The organization must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An organization that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this section [provision]. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic as-

sociations, churches with membership consisting of family members only, missionary organizations, and groups who meet for the purpose of holding prayer meetings, bible study, or revivals.

(15) [~~(14)~~] Retail sale--Sale to a consumer as opposed to a sale to a retailer for resale or for further processing and resale.

(16) [~~(15)~~] Retailer--Any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering them for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes. No person will be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(17) [~~(16)~~] Sales price--The total amount to be paid, as set forth in the invoice or bill of sale, excluding any separately stated shipping, freight, or delivery charges from the manufacturer to the retailer or other person.

(18) [~~(17)~~] Use--The exercise of any right or power over a manufactured home incident to its ownership, including the sale, lease, or rental, or the incorporation of any manufactured home into real estate or into improvements on real estate.

(19) [~~(18)~~] Used manufactured home--One that has been subject to a retail sale.

(b) Imposition of tax.

(1) The manufactured housing sales tax is due on all new manufactured homes sold or consigned by a manufacturer to a retailer or other person in this state. [~~by manufacturers on or after March 1, 1982, regardless of the date the manufacturing process was started or when the order for the home was placed.~~]

(A) Invoices [~~dated September 1, 1983, or after,~~] for all new manufactured homes sold by manufacturers[~~,~~] must set forth the amount of tax imposed at the rate of 5.0% of 65% of the sales price (equivalent to 3.25% of the sales price).

(B) The manufacturer must report and pay the tax to the comptroller on or before the last day of the month following the month in which the manufactured home was sold.

(C) A manufactured home is presumed to be "sold" at the time the home is sold or consigned by the manufacturer to a retailer or other person in this state [~~Texas~~] or is shipped to any point in this state [~~Texas~~] for the use and benefit of any person.

(2) Parts and accessories added to a manufactured home by the retailer. Limited sales or use tax is due on parts or accessories installed by a retailer in or on a manufactured home, pursuant to Tax Code, Chapter 151. For information on the taxability of parts and accessories added to a manufactured home, see §3.306(c) of this title. [~~Any person who has purchased a mobile home for personal use and not for resale prior to March 1, 1982, and who has not paid the motor vehicle sales and use tax imposed on mobile homes prior to March 1, 1982, will be held liable for the motor vehicle sales and use tax rather than the manufactured housing sales and use tax.~~]

(3) Repair, remodeling, restoration, and maintenance of a manufactured home. The labor to repair, remodel, restore, or maintain a manufactured home may be subject to the limited sales and use tax, pursuant to Tax Code, Chapter 151. For more information, see §3.306(c) of this title.

(c) Use tax.

(1) Manufactured homes purchased outside Texas.

(A) New manufactured homes. A [~~Effective September 1, 1983, a~~] use tax of 5.0% of 65% of the purchase price (equivalent to 3.25% of the purchase price) is due on a manufactured home that was purchased new outside of this state [~~Texas~~] for use, occupancy, resale, or exchange in this state [~~Texas~~]. The tax is to be paid by the person to whom or for whom the home was sold, shipped, or consigned. It is presumed that a manufactured home was not purchased for use or occupancy in this state if the purchaser has purchased the home at a retail sale at least one year prior to its being brought or shipped to this state [~~Texas~~].

(B) Used manufactured homes. The use tax does not apply to a manufactured home that was purchased used at a retail sale outside of this state [~~Texas. Use tax does apply to used manufactured homes acquired prior to March 1, 1982, for resale by a retailer~~].

(2) Manufactured homes purchased in this state [~~Texas~~].

(A) New manufactured homes.

(i) A use tax of 5.0% of 65% of the purchase price (equivalent to 3.25% of the purchase price) is imposed on a manufactured home that was purchased new in this state [~~Texas~~].

(ii) The use tax is not due if the manufacturer has paid the sales tax on the home to this state. It will be presumed that the sales tax has been paid on a manufactured home sold, shipped, or consigned by the manufacturer to a retailer or other person in this state [~~Texas~~]. The comptroller, the manufacturer, the retailer, and the user of the home may introduce evidence to establish whether or not the sales tax has been paid.

(B) Used manufactured homes. The use tax does not apply to a manufactured home purchased used at retail in this state [~~Texas. Use tax does apply to a used manufactured home acquired prior to March 1, 1982, for resale by a retailer~~].

(3) A credit equal to the amount of any legally imposed sales or use tax paid to another state on a manufactured home may be taken against the use tax imposed in this state.

(4) The use tax imposed is to be paid directly to the comptroller by the person to whom or for whom the home was sold, shipped, or consigned. The use tax is due and payable by the last day of the month following the month after the home is sold, shipped, or consigned to a person in this state [~~Texas~~].

(d) Interstate sales of manufactured housing.

(1) A manufacturer engaged in business in this state [~~Texas~~] but located outside this state must collect and remit to the comptroller the manufactured housing sales tax on the initial sale, shipment, or consignment of a manufactured home to a retailer or other person in this state.

(2) The sales tax is not imposed on a manufactured home that is sold, shipped, or consigned to a retailer or other person when a manufacturer located in this state [~~Texas~~] ships the home to a point outside this state by means of:

(A) the facilities of the manufacturer; or

(B) delivery by the manufacturer to a carrier for shipment under a bill of lading to a consignee at a location outside this state.

(3) The sales tax is not imposed on a manufactured home that is sold to a [~~Texas~~] retailer in this state for resale at retail to a resident of another state if the home is transported to and installed for occupancy on a home site [~~homesite~~] located in another state.

(A) This exemption does not apply if the home is titled or registered in this state [~~Texas~~] or if the home is used for any purpose other than display prior to being transported outside of the state.

(B) The manufacturer may accept an exemption certificate which has been properly completed and signed by the retailer and the consumer in compliance with subsection (e) of this section.

(C) A retailer who has previously paid the sales tax imposed by this chapter to the manufacturer on a transaction exempt under this section [~~rule~~] may claim a credit or a refund from the manufacturer.

(e) Exemption Certificates.

(1) An exemption certificate may be issued by:

(A) the United States[~~, its unincorporated agencies or instrumentalities~~];

(B) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(C) federal credit unions organized under 12 United States Code, §1768, federal land bank associations organized under 12 United States Code, §2098, or farm credit banks organized under 12 United States Code, §2023;

(D) the State of Texas, its unincorporated agencies and instrumentalities;

(E) any county, city, special district, or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(F) nonprofit corporations formed under Local Government Code, Chapter 501, Provisions Governing Development Corporations [~~the Development Corporation Act of 1979~~] or Health and Safety Code, Chapter 221, Health Facilities Development Act [~~the Health Facilities Development Act of 1981~~] when purchasing items for their exclusive use and benefit. The exemption does not apply to items purchased by the corporation to be lent, sold, leased, or rented;

(G) any organization created for religious, educational, charitable, or eleemosynary purposes, provided that such organization must have requested and been granted exempt status by the comptroller [~~Comptroller~~]. In order to qualify for exempt status the organization must meet all of the following requirements:

(i) An organization must be organized or formed solely to conduct one or more exempt activities. All documents necessary to prove the purpose for which an organization is formed will be considered when exempt status is sought.

(ii) An organization must devote its operations exclusively to one or more exempt activities.

(iii) An organization must dedicate its assets in perpetuity to one or more exempt activities.

(iv) No profit or gain may pass directly or indirectly to any private shareholder or individual. All salaries or other benefits furnished officers and employees must be commensurate with the services actually rendered.

(H) A resident of another state who purchases a new manufactured home from a [~~Texas~~] retailer in this state for immediate transport, installation, and occupancy at a home site [~~homesite~~] located outside of this state [~~Texas~~], provided the home:

(i) has not been used by the retailer for any purpose other than display; and

(ii) is not titled or registered in this state [~~Texas~~].

(2) A manufacturer who accepts an exemption certificate in good faith is relieved of the responsibility for collecting the tax as required by [~~the~~] Tax Code, §158.053. A retailer must submit to the manufacturer an exemption certificate which has been signed and completed by itself and the purchaser.

(A) A retailer must keep a copy of the exemption certificate attached to the invoice or bill of sale transferring title to the purchaser.

(B) The manufacturer must retain the original of the exemption certificate attached to the invoice or bill of sale.

(3) Any person who issues an exemption certificate for a manufactured home and then uses the home for other than exempt use will be liable for the tax. The tax will be based on the selling price of the manufactured home to the person who issued the exemption certificate.

(4) The exemption certificate must include:

(A) names and addresses of the manufacturer, retailer, and purchaser;

(B) a description of the manufactured home;

(C) the address where the manufactured home will be installed;

(D) reason for exemption; and

(E) signatures of both the retailer and purchaser.

(5) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Manufactured Housing Sales and Use Tax Exemption Certificate (Form 18-301). Copies of the exemption certificate are available at: http://window.state.tx.us/taxinfo/taxforms/99-forms.html. [~~The comptroller adopts the certificate by reference. Copies are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 West Sixth Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-1382. In Austin call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.~~]

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 June 3, 2013.

TRD-201302241
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §§3.541, 3.544 - 3.563, 3.565 - 3.570, 3.575, 3.576, 3.578 - 3.580

(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 Comptroller of Public Accounts or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §§3.541, 3.544 - 3.563, 3.565 - 3.570, 3.575, 3.576, and 3.578 - 3.580, concerning taxable capital and earned surplus. These rules are being repealed as the provisions apply only to reports due for periods that are beyond the statute of limitations. The proposed repeal is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter V, conducted by the comptroller. The rule review was performed under Government Code, §2001.039, and concluded that these rules are now obsolete. New rules were adopted in 2008 to administer the revised Texas franchise tax based on margin.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications to the state or to units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be by removing obsolete provisions from the Texas Administrative Code. There would be no anticipated significant economic cost to the public. The repeal is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, Chapter 171 for replacement with margin tax.

§3.541. Exemptions.
§3.544. Reports and Payments.
§3.545. Extensions.
§3.546. Taxable Capital: Nexus.
§3.547. Taxable Capital: Accounting Methods.
§3.548. Taxable Capital: Close and S Corporations.
§3.549. Taxable Capital: Apportionment.
§3.550. Taxable Capital: Stated Capital.
§3.551. Taxable Capital: Surplus.
§3.552. Taxable Capital: In Process of Liquidation.
§3.553. Taxable Capital: Oil and Gas Reserves.
§3.554. Earned Surplus: Nexus.
§3.555. Earned Surplus: Computation.
§3.556. Earned Surplus: S Corporations.
§3.557. Earned Surplus: Apportionment.
§3.558. Earned Surplus: Officer and Director Compensation.
§3.559. Earned Surplus: Temporary Credit.
§3.560. Banking Corporations.
§3.561. Enterprise Zones and Defense Economic Readjustment Zones.
§3.562. Limited Liability Companies.
§3.563. Savings and Loan Associations.
§3.565. Survivors of Mergers.
§3.566. Title Insurance Holding Companies.
§3.567. Additional Tax on Earned Surplus.
§3.568. Changes in Corporate Organization.
§3.569. Texas Youth Commission Credit.
§3.570. Liens.
§3.575. Annual Extensions/Electronic Funds Transfer.
§3.576. Earned Surplus: Allocation.
§3.578. Economic Development Credits.
§3.579. Child Care Credits.
§3.580. Credit for Hiring Persons with Disabilities.

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 June 3, 2013.

TRD-201302242
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 475-0387

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES
SUBCHAPTER F. EMPLOYEE TRAINING AND EDUCATION

The Texas Department of Transportation (department) proposes the repeal of §§4.60 - 4.63 and new §4.61, concerning employee training and education.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTION

The department operates a Tuition Assistance Program under the State Employee Training Act, Government Code, §§656.041 - 656.104. A recent internal audit revealed that the program as currently operated is vulnerable to possible waste, excess, fraud, and lack of compliance. Existing §§4.60 - 4.63 do not afford the department sufficient flexibility to address these vulnerabilities, nor to otherwise administer the program efficiently. Further, the rules contain information relating solely to the internal personnel rules and practices of the agency. The repeal of these sections is necessary to provide greater flexibility in administering the tuition assistance program and to eliminate unnecessary internal operating procedures from the rules.

New §4.61, Tuition Assistance Program, is adopted to authorize the department generally to adopt policies regarding employee education in compliance with the State Employee Training Act, Government Code, §§656.041 - 656.104.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the repeals and new section as proposed are in effect, there will be no fiscal implications

for state or local governments as a result of enforcing or administering the repeals and new section.

Lauren Garduno, Chief Procurement Officer and Deputy Administration Officer, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new section.

PUBLIC BENEFIT AND COST

Mr. Garduno has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new section will be improved efficiency and accountability in the department's tuition assistance program. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §§4.60 - 4.63 and new §4.61 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "4.61." The deadline for receipt of comments is 5:00 p.m. on July 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed repeals and new section, or is an employee of the department.

43 TAC §§4.60 - 4.63

(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 Transportation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility and assumed obligations for training and education provided by the agency.

CROSS REFERENCE TO STATUTE

Government Code, §§656.041 - 656.104.

§4.60. Purpose.

§4.61. Definitions.

§4.62. General Standards.

§4.63. Particular Programs.

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

Filed with the Office of the Secretary of State on May 31, 2013.

TRD-201302211
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 463-8683

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43 TAC §4.61

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility and assumed obligations for training and education provided by the agency.

CROSS REFERENCE TO STATUTE

Government Code, §§656.041 - 656.104.

§4.61. Tuition Assistance Program.

The department shall develop programs for the continuing education of employees under the State Employees Training Act, Texas Government Code §§656.041 - 656.104. The eligibility of employees for training and education provided or funded by the department under the programs, and the obligations, including restrictions and potential liability, assumed by employees on receiving training or education, shall be provided in the department's policies.

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 May 31, 2013.

TRD-201302212
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 463-8683

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CHAPTER 5. FINANCE
SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

43 TAC §§5.52, 5.58, 5.59, 5.61

The Texas Department of Transportation (department) proposes amendments to §5.52, Definitions, §5.58, Calculation of Pass-Through Fares and Tolls, and §5.59, Project Development by Public or Private Entity, and new §5.61, Solicitation of Private Proposals, all concerning Pass-Through Fares and Tolls.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

Transportation Code, §222.104(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity.

The amendments will allow the department to solicit private pass-through proposals for highway projects in circumstances other than a program call issued under §5.54, and will allow the department to make payments to the private developer from any available source, including project revenues and money in the state highway fund, in order to reimburse a private entity's

project-related costs, including financing costs, and to pay a return on any private investment. The payment amounts may be adjusted based on the private developer's compliance with performance requirements in the pass-through agreement, including the availability of the highway for use by the traveling public, and because of increased operations and maintenance costs.

The amendments will authorize the department to solicit private proposals using a two-step procurement process (issuance of a request for qualifications and issuance of a request for proposals from qualified proposers), and using a one-step procurement process in which a request for proposals is issued to prequalified proposers, including proposers qualified under a comprehensive development agreement procurement that is converted by the Texas Transportation Commission (commission) to a procurement for a pass-through agreement.

Amendments to §5.52 revise the definition of certain terms used in §§5.51 - 5.60.

Amendments to §5.58 authorize the commission, for a highway project designed, developed, financed, constructed, maintained, or operated under a pass-through agreement procured under new §5.61, to approve payment of a level of pass-through tolls that exceeds the department's estimate to perform the work proposed to be performed under the agreement, and to approve the payment of pass-through tolls to reimburse the private entity's project-related costs, including financing costs, and to pay a return on any private investment.

Under the existing program, the department can only reimburse a private entity what it would cost the department to construct the project if a pass-through toll agreement was not used. There are critical highway improvement projects the department cannot currently construct because there is insufficient funding or other financing methods available to do so. There exists the potential to use a pass-through toll agreement to obtain private financing of these priority projects. In order to obtain private financing, the department will need to reimburse the private entity's financing costs and to pay a reasonable return on investment, which is prohibited under the existing program. The commission may approve the payment of pass-through tolls from any available source, including money in the state highway fund and project revenues, but not from funds derived from the issuance of bonds under Transportation Code, §201.943. Payments are subject to the availability of funds appropriated by the legislature that can be used for that purpose. In order to comply with applicable legal requirements, the amount of money that can be paid from money in the state highway fund may not exceed the amount that is eligible to be paid from those funds under state law, and that is incurred or is reasonably anticipated to be incurred by the private entity during the term of the pass-through agreement.

Amendments to §5.58 authorize the pass-through toll to vary based on the availability of the highway for use by the traveling public and the private entity's compliance with any other performance requirements included in the pass-through agreement. These amendments will allow the amount the department agrees to pay to the private entity under a pass-through agreement to be reduced if the private entity fails to comply with performance measures included in the agreement. The pass-through toll may be adjusted because of increasing operations and maintenance costs, which may occur if the amount of traffic on the highway is substantially above the traffic projections made prior to entering into the pass-through agreement. Amendments to §5.58 recognize that there may not be a minimum payment amount specified in the pass-through agreement, and that the department may make milestone payments and annual, monthly, or other periodic payments to compensate the public or private entity with whom it enters into a pass-through agreement. Amendments to §5.58 provide that the agreement, like other agreements the department enters into, may provide for the payment of compensation to the private entity as a result of a compensation event or relief event, as defined in the agreement.

Amendments to §5.59 recognize that there are restrictions in state and federal law as to when a contractor may conduct the environmental review and public involvement for a project. Amendments to §5.59 authorize the commission, for a project designed, developed, financed, constructed, maintained, or operated under a pass-through agreement procured under new §5.61, to approve the use of criteria or other requirements applicable to a particular item of work that differ from the requirements of §5.59. There are certain requirements in this section that typically are not used in agreements for privately financed projects. For example, the department has typically included performance specifications in such an agreement, rather than using prescriptive specifications. The use of performance specifications or other requirements that differ from those prescribed by §5.59 may only be approved if the executive director of the department determines that the alternative requirements are sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public. Amendments to §5.59 also authorize the executive director to approve a design exception if the proposed design is at least equivalent in quality and safety to the particular criteria.

New §5.61 authorizes the department to solicit private proposals for a pass-through agreement with a private entity for the design, development, financing, construction, maintenance, or operation of a highway project. New §5.61 provides that the requirements of §§5.53 - 5.57 and §5.59 that conflict with new §5.61 do not apply to a proposal submitted under §5.61. Those requirements are superseded by the requirements of §5.61.

New §5.61 prescribes requirements applicable to a procurement under that section, including requirements for commission approval of the issuance of a request for qualifications (RFQ) and request for proposals (RFP), required and authorized provisions in an RFQ or RFP, including evaluation criteria established for the project, the process for providing notice of the issuance of an RFQ, the process for evaluating and ranking qualifications submittals and proposals, shortlisting proposers, and selecting the proposal determined to provide the best value, and requirements for commission approval of the department's recommendation and award of a pass-through agreement.

New §5.61 provides that if authorized by the commission, the department may utilize a one-step process for the procurement of a pass-through agreement under which an RFP is issued to prequalified private entities. This includes private entities that are prequalified by being shortlisted under a comprehensive development agreement procurement that is converted by the commission to a procurement under this section. This process will facilitate the department's ability to attract meaningful proposals and generate competition in procurements for certain projects. New §5.61 authorizes the department to make payments to unsuccessful proposers that submit responsive proposals in exchange for the work product in the proposal that can be used by the department in the performance of its functions, and establishes criteria to be considered by the commission in approving a payment.

New §5.61 provides requirements for the department's negotiation of a pass-through agreement with the selected proposer, provides rights reserved by the department in administering the subchapter, provides procedures for a proposer's submission of questions or requests for clarification regarding a procurement, and prescribes procedures for submission of a protest regarding a procurement. New §5.61 provides that a pass-through agreement procured under that section may provide for the payment of compensation as a result of the termination of the agreement. Similar payments are made as a result of the termination of other highway construction contracts entered into by the department. This includes compensation for the purchase by the department, under the terms and conditions established in the agreement, of the interest of the private entity in the agreement and related property.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new section as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section. Those fiscal implications cannot be quantified with any certainty, as it depends on the number of pass-through agreements entered into under §5.61, and the amount of pass-through payments to be made under those agreements.

James Bass, Chief Financial Officer, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Bass has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to facilitate the timely financing and development of critical highway improvement projects that could not otherwise be developed on a timely basis because of insufficient highway funds. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§5.52, 5.58, and 5.59 and new §5.61 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "5.52-5.61." The deadline for receipt of comments is 5:00 p.m. on July 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments and new section, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.104, which provides the commission with the authority to adopt rules necessary to implement that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §222.104.

§5.52. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Department estimate--An estimate of what it would cost the department to perform the work proposed by the public or private entity, whether the work is proposed to be performed by the department or whether it is proposed to be performed by the public or private entity. The estimate is developed or updated by the department after receipt of a public or private entity's request and prior to the time the department executes an agreement with the public or private entity.

(4) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a project, including sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.

(5) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.

(6) Highway--Includes any facility convenient or necessary to the operation of a highway.

(7) Operation--Includes maintenance.

(8) Pass-through agreement--A pass-through toll agreement or a pass-through agreement entered under the terms of this subchapter by the department and a public or private entity.

(9) Pass-through fare--A dollar amount, including a surcharge or user fee for freight shipments, that is tied to a measure of actual or projected usage of a railway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of acquiring, designing, developing, financing, constructing, relocating, maintaining, or operating a passenger or freight railway.

(10) Pass-through toll--A dollar amount that is tied to a measure of actual or projected usage of a highway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of designing, developing, financing, constructing, maintaining, or operating a highway on the state highway system.

(11) Public or private entity--Any entity authorized by law to enter into a pass-through agreement with the department under this subchapter for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a highway or railway.

(12) Railway--Includes both passenger and freight railways and any facility convenient or necessary to the operation of a railway.

§5.58. Calculation of Pass-Through Fares and Tolls.

(a) Pass-through fares.

(1) Amount to be reimbursed.

(A) General. The commission shall establish the level of pass-through fares or shall establish parameters within which the de-

partment may negotiate the level of pass-through fares. In establishing the level of pass-through fares or parameters within which the department may negotiate the level of pass-through fares, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through fare at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through fare levels.

(i) The commission will not approve payment by the department of a level of pass-through fares that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through fares that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through fares, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through fare payments will be calculated based on the department's traffic projections for the railway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum periodic amount to be paid annually or in total.

(B) Variable payments. The pass-through fare may vary on any basis that reasonably reflects the value of improvements, the nature of the railway traffic, or benefits to the highway system, including:

(i) number, type, and class of passengers;

(ii) type of freight;

(iii) tonnage of freight;

(iv) number or type of cars;

(v) mileage traveled; or

(vi) characteristics of track.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns. Pass-through fare payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through fare will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through fare amount specified by the commission in approving the pass-through fare.

(b) Pass-through tolls.

(1) Level of pass-through tolls.

(A) General. The commission shall establish the level of pass-through tolls or shall establish parameters within which the department may negotiate the level of pass-through tolls. In establishing the level of pass-through tolls or parameters within which the department may negotiate the level of pass-through tolls, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through toll at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through toll levels.

(i) Except as provided by this clause or except for a highway project designed, developed, financed, constructed, maintained, or operated under an agreement procured under §5.61 of this subchapter (relating to Solicitation of Private Proposals), the [~~The~~] commission will not approve payment by the department of a level of pass-through tolls that exceeds the department's estimate[~~, except as permitted by this subparagraph~~]. The commission may approve the department's payment of a level of pass-through tolls that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through tolls, the commission will not consider any financing cost incurred by the public or private entity. This clause does not apply to a highway project financed under an agreement procured under §5.61 of this subchapter.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway made prior to entering into the pass-through agreement and a number and frequency of payments to be negotiated between the department and the public or private entity. The department may make milestone payments and annual, monthly, or other periodic payments to compensate the public or private entity with whom it enters into a pass-through agreement [~~payment schedule may include a maximum and a minimum annual amount to be paid periodically or in total~~].

(B) Variable payments. The level of the pass-through toll may vary on any basis that reasonably reflects the value or cost of improvements or services, the nature of the highway, or benefits to other aspects of the highway system, including:

(i) the number of vehicles using the highway;

(ii) the number of vehicle-miles traveled on the highway;

(iii) the condition of the highway; [~~and~~]

(iv) the availability of the highway for use by the traveling public;

(v) compliance with any other performance requirements included in the pass-through agreement;

(vi) increasing operations and maintenance costs; and

(vii) [~~(iv)~~] whether the highway is tolled.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns.

(i) Projects developed by the public or private entity. If the project is being developed by the public or private entity, the pass-through toll payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(ii) Projects developed by the department. If the project is being developed by the department, the pass-through agreement shall provide that the pass-through toll or the maximum amount payable, or both, shall be adjusted to reflect the department's actual costs unless the commission specifically directs that the department shall bear the risk of cost overruns or underruns.

(B) Traffic volume. If traffic volume exceeds or falls below projections [~~expectations~~], the pass-through toll will not be adjusted. [~~Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through toll amount specified by the commission in approving the pass-through toll.~~]

(C) Maximum and minimum amounts. The pass-through agreement may include a maximum amount, a minimum amount, or a maximum and minimum amount, to be paid in intervals or in total for the specified period. The payments may be made periodically as defined in the pass-through agreement. Payments shall not exceed the maximum amount, if any, specified in the pass-through agreement and shall not be below the minimum amount, if any, specified in the pass-through agreement. If a pass-through agreement procured under §5.61 of this subchapter specifies a periodic maximum amount calculated based on the level of the pass-through toll and the department's traffic projections for the highway made prior to or at the time of entering into the pass-through agreement, the pass-through agreement may also include any terms and conditions that the commission approves for calculating and making payments in lesser amounts, including downward adjustments based on the availability of the highway for use by the traveling public or compliance with other performance measures set forth in the pass-through agreement. The pass-through agreement may also include any terms and conditions the commission approves for paying compensation to the private entity as a result of a compensation event or relief event, as defined in the agreement.

(D) Source of payments. The commission may approve the payment of pass-through tolls from any available source, including money in the state highway fund and the revenues, if any, of a project, but not from funds derived from the issuance of bonds under Transportation Code, §201.943. Payments may be made in connection with a highway project financed under an agreement procured under §5.61 of this subchapter in order to reimburse the private entity's project-related costs, including financing costs, and to pay a return on any private investment. Payments are subject to the availability of funds appropriated by the legislature that may be used for that purpose or other funds that may be used for that purpose. The amount that may be paid from money in the state highway fund may not exceed the amount that is eligible to be paid from those funds under the Texas Constitution and that is incurred or is reasonably anticipated to be incurred by the entity during the term of the pass-through agreement.

§5.59. Project Development by Public or Private Entity.

(a) Social and environmental impact.

(1) General. To the extent allowed by law, a [~~A~~] public or private entity that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter A of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department approval. The department must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. The department may authorize or require a [~~A~~] public or private entity [~~may request written approval~~] to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the design, construction, and[~~,~~] operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity shall comply with the latest version of the department's manuals.

(i) Highway projects. Each highway project shall, at a minimum, comply with the:

(I) Roadway Design Manual;

(II) Pavement Design Manual;

(III) Hydraulic Design Manual;

(IV) Texas Manual on Uniform Traffic Control Devices;

(V) Bridge Design Manual;

(VI) Texas Accessibility Standards;

(VII) 16 TAC Chapter 68 relating to Elimination of Architectural Barriers; and

(VIII) Americans with Disabilities Act Accessibility Guidelines.

(ii) Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. The department may authorize or require a [~~A~~] public or private entity [~~may request approval~~] to use different accepted criteria for a particular item of work. Alternative criteria may include the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that:

(i) the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution; or [~~.~~]

(ii) the proposed design is at least equivalent in quality and safety to the particular criteria.

(3) Access to a highway project.

(A) Access management. Access to a highway shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete or as otherwise provided in a pass-through agreement, the public or private entity shall send the following preliminary design information to the department for review, review and comment, or review and approval, as designated by the department in the pass-through agreement, in accordance with the procedures and timeline established in the pass-through [~~project development~~] agreement [~~described in subsection (d) of this section~~]:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway design and construction specifications.

(A) Except as provided in subparagraph (C) of this paragraph, all [~~All~~] plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(C) For a project designed, developed, financed, constructed, maintained, or operated under a pass-through agreement procured under §5.61 of this subchapter (relating to Solicitation of Private Proposals), the executive director may approve the use of criteria or other requirements applicable to a particular item of work that differ from the requirements of this section. The criteria or requirements approved by the executive director may include the standard technical provisions and specifications that the department uses for transportation projects delivered under comprehensive development agreements that are procured under Chapter 27, Subchapter A of this title (relating to Comprehensive Development Agreements). In approving the alternative criteria or requirements, the executive director must determine that the alternative criteria or requirements are sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the public and the railway system.

(7) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity shall send [~~the following information~~] to the department for review, review and comment, or review and approval, as designated by the department in the pass-through agreement, in accordance with the procedures and timelines established in the pass-through agreement [~~contract described in §5.57(b) of this subchapter~~]:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously reviewed [~~approved~~] by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) Contract revisions. All revisions to any construction contract entered into under a pass-through agreement under this subchapter shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the department for approval prior to beginning the revised construction work. Procedures governing the department's approval, including time limits for department review, shall be included in the agreement described in §5.57(b) of this subchapter (relating to Final Approval).

(10) As-built plans. Within six months after final completion of the construction project, the public or private entity shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) Document and information exchange. The public or private entity agrees to deliver to the department all materials used in the development of the project including aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, contract provision requirements, and all information necessary for the department to update legacy data systems.

(12) State and federal law. The public or private entity shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity except for any permits, plans, or other documentation that the department agrees to obtain.

(d) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

(f) Bond financing.

(1) Department review. If any public or private entity responsible for financing a portion of a project to be developed under a pass-through agreement intends to sell bonds and use pass-through toll or fare payments from the department as evidence of financial capability to repay the bonds, the entity shall provide the department an opportunity to review and comment on bond offering documents prior to sale of the bonds.

(2) Pass-through agreement. The pass-through agreement or the terms of a solicitation for a pass-through agreement procured under §5.61 of this subchapter must provide that:

(A) the department will have at least five business days after the date on which it receives all of the bond offering documents to review those documents; and

(B) the public or private entity must obtain department pre-approval of any provision in the bond offering documents that describes the pass-through agreement, the department's obligations under the pass-through agreement, the interrelationship of the department, commission, and state highway fund, and the department's obligation to provide bond investors with updated information on the status of the state highway fund.

(3) Business day. For purposes of this subsection, "business day" excludes Saturday, Sunday, a federal holiday, the Friday after Thanksgiving, and December 24 and 26.

§5.61. Solicitation of Private Proposals.

(a) Scope. This section applies only to the procurement of a pass-through agreement with a private entity for the design, development, financing, construction, maintenance, or operation of a highway project.

(b) Applicability of other provisions. The requirements of §§5.53 - 5.56, 5.57(a), 5.59(c)(7)(C), (D), and (c)(9) of this subchapter (relating to Proposal, Participation in the Program, Commission Approval to Negotiate, Proposals from Private Entities, Final Approval,

and Project Development by Public or Private Entity, respectively) do not apply to a proposal submitted under this section.

(c) Content of pass-through agreement. The requirements for pass-through agreements set forth in §5.57(b) of this subchapter apply to a pass-through agreement procured under this section, except that the department may exclude the requirement for an estimated budget.

(d) Request for qualifications - notice. If authorized by the commission to issue a request for qualifications for a project, the department will prepare a request for qualifications under subsection (e) of this section and will publish notice advertising the issuance of the request for qualifications in the *Texas Register.* The department will post the notice and the request for qualifications on the department's Internet website. The department may also furnish the request for qualifications to private entities that the department believes might be interested and qualified to participate in the proposed project.

(e) Request for qualifications - content. The request for qualifications will include the criteria for professional experience, technical competence, and capability to complete the proposed project, other information that the department considers relevant or necessary for the project, and the criteria that will be used to evaluate the submittals made in response to the request and the relative weight given to the criteria. At its sole option, the department may furnish conceptual designs, fundamental details, technical studies and reports, or detailed plans of the proposed project in the request for qualifications. The request for qualifications may request one or more conceptual approaches to bring the project to fruition.

(f) Request for qualifications - evaluation. The department, after evaluating the submittals received in response to a request for qualifications, will identify the entities that are considered most qualified to submit detailed proposals for a proposed project and approve a short-list that is composed of those entities. The department shall notify each entity that provides a qualification submittal whether or not it is on the short-list of qualified entities.

(g) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all qualified entities on the short-list that requires the submission of detailed documentation regarding the project. Specific evaluation criteria established for the project under subsection (j) of this section and requests for pertinent information will be set forth in the request for proposals. The request for proposals may require the submission of information relating to:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the proposer's ability to meet schedules;

(5) a detailed financial plan, including costing methodology, cost proposals, and project financing approach;

(6) the amount and period of payments requested and proposed pass-through payment schedule;

(7) the amount of the project proposed to be delivered for a schedule of periodic payments established by the department; and

(8) any other information the department considers relevant or necessary.

(h) Alternative solicitation process. If authorized by the commission, the department may utilize a one-step process for the procurement of a pass-through agreement under this section in which a request for proposals is issued in accordance with subsection (g) of this section to prequalified private entities. Subsections (d), (e), and (f) of this section do not apply for a procurement under this subsection. Private entities may be prequalified using the procedure set forth in §27.7 of this title (relating to Design-Build Contracts), or may be prequalified by being shortlisted under a comprehensive development agreement procurement that is converted by the commission to a procurement for a pass-through agreement under this section.

(i) Requests for proposals - payment for work product. The request for proposals may stipulate an amount of money that the department will pay to an unsuccessful proposer that submits a detailed proposal that is responsive to the requirements of the request for proposals, not to exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The request for proposals may provide for the payment of a partial amount in the event the procurement is terminated. The commission shall approve the amount of the payment to be stipulated in the request for proposals. In determining whether to approve a payment, the commission shall consider:

(1) the effect of a payment on the department's ability to attract meaningful proposals and to generate competition;

(2) the work product expected to be included in the proposal and the anticipated value of that work product; and

(3) the costs anticipated to be incurred by a private entity in preparing a proposal.

(j) Detailed proposal evaluation criteria. The department will evaluate proposals using evaluation criteria the department considers appropriate for the project. The criteria may include:

(1) the reasonableness of any financial plan submitted by a proposer;

(2) the reasonableness of the project schedule;

(3) the amount of pass-through tolls to be paid;

(4) the period of payment;

(5) any maximum and minimum payment amounts;

(6) the amount of the project proposed to be delivered for a schedule of periodic payments established by the department;

(7) the reasonableness of assumptions, including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project;

(8) financial exposure and benefit to the department;

(9) compatibility with other planned or existing transportation facilities;

(10) likelihood of obtaining necessary approvals and other support;

(11) cost and pricing;

(12) scheduling;

(13) environmental impact;

(14) manpower availability;

(15) use of technology;

(16) public outreach and communications;

(17) project coordination, with attention to efficiency and quality of finished product; and

(18) any other criteria, including conformity with department policies, guidelines, and standards, that the department considers

appropriate to maximize the overall performance of the project and the resulting benefits to the state.

(k) Apparent best value proposal. After evaluation of the proposals under subsection (j) of this section, the department will rank all proposals that are complete and responsive to the request for proposals, and that comply with the requirements of this subchapter. The department may select the private entity whose proposal offers the apparent best value to the department. After award of the pass-through agreement, the department will notify proposers in writing of the department's rankings and will make the rankings available to the public.

(l) Selection of entity. The department will submit a recommendation to the commission regarding approval of the proposal determined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the pass-through agreement, subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the agreement, and satisfaction of any other conditions that are identified in the request for proposals or by the commission.

(m) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate a pass-through agreement with the apparent best value proposer, or the department may accept the proposal and enter into the agreement without negotiation. If an agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the best value, the department will formally end negotiations with that proposer and, in its discretion:

(1) reject all proposals;

(2) modify the request for proposals and issue that request in accordance with subsection (g) of this section; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate a pass-through agreement with the entity that submitted that proposal in accordance with this section.

(n) Reservation of rights. The department reserves all rights available to it by law in administering this section, including, without limitation, the right in its sole discretion to:

(1) withdraw a request for qualifications or a request for proposals at any time, and issue a new request in accordance with the appropriate provisions of this section;

(2) reject any and all qualifications submittals or proposals at any time;

(3) terminate the evaluation of any and all qualifications submittals or proposals at any time;

(4) suspend, discontinue, or terminate negotiations with any proposer at any time before the execution of the agreement by all parties;

(5) negotiate with a proposer without being bound by any provision in its proposal;

(6) negotiate with a proposer to include aspects of unsuccessful proposals for that project in the agreement;

(7) request or obtain additional information about any qualifications submittal or proposal from any source;

(8) modify, issue addenda to, or cancel any request for qualifications or request for proposals; or

(9) waive deficiencies in a qualifications submittal or proposal or accept and review a non-conforming qualifications submittal or proposal.

(o) Department information. Any information that the department makes available to a proposer is provided as a convenience to the proposer and without representation or warranty of any kind except as expressly specified in the request for qualifications or request for proposals.

(p) Procedure for communications. If a proposer has a question or request for clarification regarding this subchapter or any request for qualifications or request for proposals issued by the department, the proposer must submit the question or request for clarification in writing to the person responsible for receiving those submissions, as designated in the request for qualifications or request for proposals, and the department will provide its responses in writing. The proposer shall comply with all requirements in the request for qualifications or request for proposals regulating communications. A proposer may not rely on any oral responses to inquiries.

(q) Protest procedures. A protest regarding a procurement conducted under this section may only be made to the extent authorized under §27.6 of this title (relating to Protest Procedures), and in accordance with the procedures prescribed in that section.

(r) Termination of pass-through agreement. A pass-through agreement procured under this section may provide for the payment of compensation as a result of the termination of the agreement, including compensation for the purchase by the department, under terms and conditions established in the agreement, of the interest of the private entity in the agreement and related property.

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 May 31, 2013.

TRD-201302213
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 463-8683

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.35

The Texas Department of Transportation (department) proposes amendments to §9.35, Federal Process, concerning Contracting for Architectural, Engineering, and Surveying Services.

EXPLANATION OF PROPOSED AMENDMENTS

The Federal Highway Administration is conducting a pilot program to evaluate the use of a "safe harbor rate" for engineering and design-related services contracts. The safe harbor rate serves as an indirect cost rate for engineering and design-related firms that lack a Federal Acquisition Regulation (FAR) compli-

ant indirect cost rate. The amendment to §9.35 allows the safe harbor rate to be used, which accommodates the department's participation in the pilot program.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendment as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the department's participation in the pilot program, which serves to enhance competition for engineering and design-related services contracts by accommodating firms that lack an FAR-compliant indirect cost rate. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.35 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "9.35." The deadline for receipt of comments is 5:00 p.m. on July 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.35. Federal Process.

(a) This section applies to an engineering or design related service contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding.

(b) A firm providing engineering and design related services must be administratively qualified under §9.34(b)(2) - (6) of this subchapter (relating to Standard Process), or use an indirect cost rate applicable under Federal Highway Administration regulations or guidelines, by the closing date of the NOI to compete for contracts under this section. Paragraphs (7) and (8) of §9.34(b) of this subchapter do not apply to a contract under this section.

(c) Except as provided in subsection (b) of this section, the process described in §9.34 of this subchapter applies to contracts under this section.

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 May 31, 2013.

TRD-201302214
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 463-8683

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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER F. PORT FREEPORT NAVIGATION DISTRICT PERMITS

43 TAC §§28.60 - 28.67

The Texas Department of Transportation (department) proposes new §§28.60 - 28.67, concerning Port Freeport Permits.

EXPLANATION OF PROPOSED NEW SECTIONS

Under Transportation Code, Chapter 623, Subchapter K, the Texas Transportation Commission (commission) has the authority to authorize Port Freeport (district) to issue permits for oversize and overweight vehicles on certain roads within the district's territory. The district contacted the department and expressed the desire to obtain the authority needed to issue permits as allowed under current state law. The proposed new sections are necessary to authorize the district to issue permits and to implement and carry out the provisions of Transportation Code, Chapter 623, Subchapter K. These rules add new Subchapter F, which was developed to be consistent with similar optional permitting programs previously established by the commission.

New §28.60 sets out the purpose of Subchapter F, which is to allow the district the authority to issue permits for the movement on roads designated by Transportation Code, §623.219(b) of oversize or overweight vehicles weighing up to 125,000 pounds.

New §28.61 sets out the applicable definitions used in the subchapter.

New §28.62 provides the powers and duties of the district and the department for the implementation and oversight of the district permit program. Subsection (a) authorizes the issuance of permits and collection of fees and provides the maximum dimensions and gross weight that may be allowed under a permit. Subsection (b) authorizes the department to require a surety bond to pay for the costs of the maintenance of the roadways that are used by the permitted vehicles if the amount of the fees deposited in the state highway fund is not sufficient to cover those costs. The district can prevent recovery on the bond by paying the amount not covered by the fees. The section also covers the verification of permits, the provision of training necessary for the district to issue permits, and the accounting and auditing re-

quirements. Subsection (g) provides the department's authority to ensure that the district complies with applicable law, including the rules in new Subchapter F. Subsection (h) sets out the fee requirements. Subsection (i) requires the district to enter into a contract with the department for the maintenance of roads on which the permitted vehicles will travel. Finally, subsection (j) sets out the district's reporting requirements. The provisions of the section were developed to be in compliance with Transportation Code, Chapter 623, Subchapter K, and to be consistent with similar optional permitting programs previously established.

New §28.63 establishes the eligibility requirements that must be satisfied for the issuance of a permit by the district. The section prohibits the district from issuing a permit to a person or for a vehicle if administrative penalties imposed under Transportation Code, §623.271 have not been paid. This prohibition is required under Transportation Code, §623.271.

New §28.64 sets out the requirements related to the form and content of the application for a permit and of the permit. The requirements are necessary to comply with Transportation Code, §623.215 and are as consistent as possible with similar optional permitting programs previously established by the department.

New §28.65 provides the permit weight limits for axles that the district must follow as part of the permit program. Requirements and specifications include minimum axle group spacing and maximum permit weight for single and multiple axles.

New §28.66 sets forth movement requirements and restrictions that the district and a permittee must follow as part of the permit program. A permittee is required to carry the issued permit when moving the permitted vehicle and is prohibited under this section from moving an oversize or overweight load if a permit becomes void. A permit is void on issuance if the applicant for the permit gives false or incorrect information and becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit. The section provides limitations on the movement of a permitted vehicle because of weather conditions, road work, or time of day. Finally, the section sets out the requirements for types of scales that may be used to weigh permitted vehicles and provides speed restrictions.

New §28.67 provides the records maintenance requirements that the district must follow as part of the permit process.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. The cost of authorizing the district to issue oversize and overweight vehicle permits and maintaining the affected roads will be offset by the permit fees collected by the district.

Howard Holland, Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Mr. Holland has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be convenience and improved public safety. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§28.60 - 28.67 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "28.60 - 28.67." The deadline for receipt of comments is 5:00 p.m. on July 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.212, which allows the commission to authorize the district to issue permits for the movement of oversize or overweight vehicles, and Transportation Code, §623.002, which provides the commission with the authority to establish rules necessary to implement Transportation Code, Chapter 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter K.

§28.60. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the commission may authorize Port Freeport to issue permits for the movement of oversize or overweight vehicles carrying cargo on roads designated by Transportation Code, §623.219(b). This subchapter sets forth the requirements and procedures applicable to the issuance of permits by Port Freeport for the movement of oversize and overweight vehicles.

§28.61. Definition.

In this subchapter, "district" means Port Freeport, which is subject to Special District Local Laws Code, Chapter 5002.

§28.62. District's Powers and Duties.

(a) District authorized to issue permits. The district may issue a permit and collect a fee for the movement within the territory of the district on the roads designated by Transportation Code, §623.219(b) of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight.

(b) Surety bond. The department may require the district to post a surety bond in the amount of $500,000 for the reimbursement of the department for actual maintenance costs of roads designated by Transportation Code, §623.219(b) if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the district fails to reimburse the department for those costs.

(c) Verification of permits. The district shall provide law enforcement and department personnel access to any of the district's property to verify compliance with this subchapter by the district or another person.

(d) Training. The district shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the district.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the district must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the district. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the district is not complying with this subchapter or other applicable law, the executive director will issue a notice to the district allowing 30 days for the district to correct any non-compliance issue. If the department determines that, after that 30-day period, the district has not corrected the issue, the executive director may revoke the district's authority to issue permits under this subchapter. The district may appeal to the commission in writing the revocation of its authority under this subsection. If the district appeals the revocation, the district's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.214. The district may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency. On revocation of the district's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the district shall pay to the department all permit fees collected by the district, less allowable administrative costs.

(i) Maintenance contract. The district shall enter into a contract with the department for the maintenance of roads designated by Transportation Code, §623.219(b) for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The district shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

§28.63. Permit Eligibility.

(a) Registration requirements. To be eligible for a permit under this subchapter:

(1) a vehicle or combination of vehicles must be registered under Transportation Code, Chapter 502; and

(2) the owner of the vehicle or combination of vehicles must be registered as a motor carrier under Transportation Code, Chapter 643 or 645.

(b) Prohibition for unpaid penalties. The district may not issue a permit under this subchapter:

(1) to a person or company that is prohibited under Transportation Code, §623.271 from being issued a permit; or

(2) for a vehicle that is prohibited under Transportation Code, §623.271 from being issued a permit.

§28.64. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter must be in a form approved by the department and at a minimum must include:

(1) the name of the applicant;

(2) the name of the driver of the vehicle in which the cargo is to be transported;

(3) a description of the kind of cargo to be transported;

(4) the kind and weight of each commodity to be transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the location where the cargo will be loaded; and

(7) the date or dates on which movement is requested.

(b) Permit form and contents. A permit issued under this subchapter must be in a form approved by the department and at a minimum must include all information required under Transportation Code, §623.215(a) and §623.216.

§28.65. Permit Weight Limits for Axles.

(a) Minimum axle group spacing. For an axle group to be permitted for maximum weight authorized under this section:

(1) an axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group; and

(2) two or more consecutive axle groups must have a minimum axle spacing of 12 feet, measured from center of the last axle of a group to center of the first axle of the immediately following group.

(b) Maximum permit weight. Maximum permit weight for an axle or axle group is the weight computed by multiplying 650 pounds times the total number of inches of the width of tires on the axle or group or the following applicable axle or axle group weight, whichever is less:

(1) single axle - 25,000 pounds;

(2) two-axle group - 46,000 pounds;

(3) three-axle group - 60,000 pounds;

(4) four-axle group - 70,000 pounds;

(5) five-axle group - 81,400 pounds; or

(6) trunnion axles - 60,000 pounds if:

(A) the trunnion configuration has two axles;

(B) there are a total of 16 tires for the trunnion configuration; and

(C) the trunnion axle, as shown in the following diagram, is 10 feet in width.

Figure: 43 TAC §28.65(b)(6)(C)

(c) Tire load rating. A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Permits for vehicles exceeding permit weight limits. For a vehicle exceeding weight limits provided in this section, a person must apply directly to the Texas Department of Motor Vehicles for an

oversize or overweight permit in accordance with Transportation Code, Chapter 623.

§28.66. Movement Requirements and Restrictions.

(a) Carrying of permit. The original permit issued by the district must be carried in the permitted vehicle.

(b) Prohibition on movement with void permit. A permittee is prohibited from transporting an oversize or overweight load with a void permit. A permit is void if the applicant gives false or incorrect information. A permit becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit.

(c) Weather conditions or road work. Movement of a permitted vehicle is prohibited when:

(1) visibility is reduced to less than 2/10 of one mile;

(2) the road surface is hazardous due to weather conditions, such as rain, ice, sleet, or snow; or

(3) highway maintenance or construction work is being performed.

(d) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours. A permitted vehicle that is overweight but not oversize may be moved at any time.

(e) Weight ticket requirement. Any vehicle issued a permit by the district must be weighed on scales that are capable of determining gross vehicle weights and individual axle loads and are certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(f) Speed. The maximum speed for a permitted vehicle is set by Transportation Code, §623.217.

§28.67. Records.

The district shall maintain records that evidence compliance with this subchapter. Those records are subject to audit by department personnel.

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 May 31, 2013.

TRD-201302215
Jeff Graham
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 14, 2013
For further information, please call: (512) 463-8683

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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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The Texas State Securities Board adopts an amendment to §109.7, concerning secondary trading exemption under the Texas Securities Act (the Act), §5.O, with changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2074). The title of the section was revised to clarify that the rule relates to the secondary trading exemption contained in the Act, §5.O, rather than secondary trading exemptions contained elsewhere in the Act or Board rules.

The Standard and Poor's manual listed in the rule has been renamed *S&P Capital IQ Standard Corporation Descriptions.*

Registered dealers seeking reliance upon the exemption contained in §5.O of the Texas Securities Act will have notice of the manuals included among the Board's "recognized securities manuals" for purposes of the exemption.

No comments were received regarding adoption of the amendment.

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

The adopted amendment affects Texas Civil Statutes, Article 581-5.

§109.7. Secondary Trading Exemption under the Texas Securities Act, §5.O.

(a) When a withdrawal of an application for registration of securities is allowed and thereafter the applicant files for a secondary trading exemption under the Act, §5.O, the Commissioner may, without a hearing, revoke or suspend the §5.O exemption. The applicant may either accept such action of the Commissioner or request a hearing under the Act, §24.

(b) The language, ". . . at prices reasonably related to the current market price of such securities at the time of such sale," means that the market price of the security in the existing secondary market must have a basis supported by a substantial volume of bona fide sales transactions within or without this state. In the absence of a going market or where there have been only casual transactions, it shall be incumbent on the person filing the §5.O exemption notice to prove to the Commissioner that the securities will have a market price which has been fairly determined and justified at inception with reasonable assurance of continuity of the market into the future, pursuant to which the following criteria will be considered:

(1) the nature and extent of the business operations of the issuer and its predecessor, if any, and the period of time during which the issuer and its predecessor, if any, has been continuously engaged in business;

(2) the net asset value of the stock per share;

(3) if there is a record of earnings for the issuer, the value per share of the stock based upon a reasonable times-earnings factor (setting out the factor used) related to the industry represented by the issuer;

(4) if the value per share of the stock on any other basis has been fully justified;

(5) if the issuer undertakes to furnish to its shareholders and dealers deemed likely to trade the securities of the issuer, financial statements for the three most recent fiscal years ending as of the balance sheet date (or for the period of existence if less than three years) and annual financial statements thereafter for so long as the exemption is maintained by filing statements with the Commissioner;

(6) whether a registered Texas securities dealer who is financially able has made a written undertaking setting out:

(A) his willingness to make a market in the issue of securities;

(B) the price at which he will begin the market; and

(C) the procedures which he intends to follow for the purpose of assuring an orderly market; and

(7) supplementary data to assist in determining the character of the share distribution and the number of publicly-held shares shall be as follows:

(A) identification of 10 largest holders of record, including beneficial owners (if known) of holdings of record by nominees;

(B) list of holdings of 1,000 shares or more in the names of registered dealers and unregistered out-of-state dealers;

(C) number of transfers and shares transferred during the last two years (or period of existence of the issuer, if shorter);

(D) summary, by principal groups, of stock owned or controlled by:

(i) officers or directors and their immediate families; or

(ii) other concentrated holdings of 10% or more;

(E) estimates of number of nonofficer employees owning stock and the total shares held;

(F) company shares held in profit-sharing, savings, pension, or other similar funds or trusts established for the benefit of officers or employees; and

(G) number of round-lot and number of odd-lot holders of record and aggregate numbers of shares so held.

(c) Sales of securities pursuant to the Securities Act, §5.O, may be made by or through securities dealers acting either as principal or agent in the transaction for which the exemption is claimed.

(d) Financial information required pursuant to the Act, §5.O(9)(b) and (c) must be prepared as certified financial statements (consolidated, if applicable) and shall include a balance sheet as of a date within 18 months of the date of such sale and the related statements of income, changes in stockholders' equity, and changes in financial position for the three most recent fiscal years ending as of the balance sheet date, or for the period of the issuer's existence, if less than three years. Such financial statements should disclose dividends paid or declared by each class of stock, for each period for which an income statement is presented.

(e) The term "recognized securities manual" used in the Texas Securities Act, §5.O(9)(c), is limited to the following and includes any electronic publication format that is as readily available to the general public as the printed version, including, without limitation, CD-Rom and electronic dissemination over the Internet:

(1) S&P Capital IQ Standard Corporation Descriptions (including the Daily News Section);

(2) Best's Insurance Reports Life-Health;

(3) Mergent's Bank and Finance Manual and News Reports;

(4) Mergent's Industrial Manual and News Reports;

(5) Mergent's Public Utility Manual and News Reports;

(6) Mergent's Transportation Manual and News Reports;

(7) Mergent's Municipal and Government Manual and News Reports;

(8) Mergent's International Manual and News Reports; and

(9) Mergent's OTC Industrial Manual and News Reports, provided however, that Mergent's OTC Industrial News Reports are recognized solely for the purpose of updating a current listing in the OTC Industrial Manual. A registered dealer who, between the date of the last publication of Mergent's OTC Industrial Manual and the effective date of this rule, relies upon a listing in the Mergent's OTC Industrial News Reports to comply with §5.O of the Act may continue to rely upon such listing until the publication date of the next Mergent's OTC Industrial Manual, which follows the effective date of this rule.

(f) The secondary trading exemption under the Act, §5.O, is not available for the securities of an issuer formed in a manner that constitutes part of a scheme to violate or evade the securities registration provisions of the Act. Depending upon all the facts and circumstances, such a scheme may include the merger of a private corporation with a corporation which has no substantive operations or assets ("shell corporation") when as a result of the merger trading in the secondary market of the shares of the post-merger corporation may be at prices which bear no relationship to the underlying financial condition or operations of the post-merger corporation, and such trading may occur within two years of the date of such merger.

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 May 30, 2013.

TRD-201302209
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 19, 2013
Proposal publication date: March 29, 2013
For further information, please call: (512) 305-8304

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.3

The Texas State Securities Board adopts an amendment to §115.3, concerning examination, without changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2074).

The Psychological Corporation no longer administers a state securities examination.

Applicants for registration as a dealer or an agent will have notice of certain categories of applicants eligible for a partial waiver of the examination requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-13.D and 581-28-1. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-13.

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 May 30, 2013.

TRD-201302210
John Morgan
Securities Commissioner
State Securities Board
Effective date: June 19, 2013
Proposal publication date: March 29, 2013
For further information, please call: (512) 305-8304

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.20, 61.40, 61.46, 61.47

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 61, §§61.20, 61.40, 61.46, and 61.47, regarding the combative sports program, as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1760) without changes, and will not be republished. The adoption takes effect June 17, 2013.

The amendments implement changes recommended by the Medical Advisory Committee at its meeting on January 25, 2013, and by Texas Department of Licensing and Regulation (Department) staff to insure the safety of contestants; to update and clarify existing rules; to improve the regulation of the industry; and to simplify and eliminate unnecessary rules as directed by the Commission. A summary of each rule amendment was included in the notice of proposed rules published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1760).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the *Texas Register* on March 15, 2013. The 30-day public comment period closed on April 15, 2013. The Department received one public comment.

The Medical Advisory Committee met on May 3, 2013, and reviewed the public comment in which the commenter stated "it does no good to list performance enhancing drugs if they aren't going to be part of the standard drug test." The commenter recommended expanding the scope of the standard test to include all categories listed in §61.47.

Department Response: The current drug testing procedures use a 9-panel drug test that screens for amphetamines, methamphetamines, cocaine, barbiturate, benzodiazepine, opiates, methadone, propoxyphene, marijuana, and PCP. In a separate test, athletes are also screened for steroid use. While some of the substances listed in §61.47 are not currently tested for, their use is still prohibited and may be discovered by ways other than drug-testing. In addition, the Department may include currently untested substances in future drug testing procedures. The Medical Advisory Committee recommended adoption of the proposed rules with no changes.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

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 May 28, 2013.

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.7, concerning Approved Continuing Education Courses, to clarify continuing education course applications and criteria for approval. This rule amendment is adopted with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9846) and will be republished.

First, the amendment adds a requirement that all applicants must submit a syllabus broken down into clearly designated hourly segments. Each segment must provide detailed information sufficient to inform the Board of the course material being taught. This allows Board staff to approve courses in part if necessary.

Additionally, the amendment adds a criteria for approval requiring the subject matter to either relate to the chiropractic scope of practice or to knowledge necessary for a licensee to comply with §75.2(a)(1)(F) of this title, relating to Proper Diligence and Efficient Practice of Chiropractic. The Board feels that continuing education courses should not be approved for subject matter not related to either of these two areas. This will assist the Board in regulating the practice of chiropractic. To clarify, the Board considers the following types of courses to be appropriate for approval: 1) courses that deal with overall health and wellness, 2) courses that deal with diagnosis and treatment of disorders that fall within the chiropractic scope of practice, 3) courses that are necessary for chiropractors to recognize disorders that are not within the chiropractic scope of practice in order to refer the patient to the appropriate health care provider. Courses that the Board considers to not be appropriate are those that deal with treatment of disorders that do not fall within the chiropractic scope of practice.

Finally, the amendment makes some grammatical and stylistic changes to the rule to make it more reader-friendly.

The change made by the Board from the proposed version of the rule was in response to comment received from Texas Chiropractic Association (TCA). TCA argued that the term "chiropractic" proposed to be added in front of acupuncture in subsection (h)(4)(V) is "undefined and out of place" because §75.21 of this title, relating to Acupuncture, does not refer to "chiropractic acupuncture." Additionally, the Education Chair of TCA argued that use of the term "chiropractic" in front of acupuncture was unnecessary. The Board agreed and removed the term "chiropractic" in subsection (h)(4)(V) from the adopted rule.

Comments received in writing via mail, fax, and email were accepted by the Board from December 21, 2012 to January 21,

2013. Two comments were received by the Board on the proposed amendment during this time period. Three other comments were received by the Board after the comment period closed, but were considered by the Board.

The first comment was received from the TCA. One point raised by TCA suggests that a topic such as "forensic documentation" would not be an acceptable continuing education topic under the proposed rule amendment. The Board disagrees. The topic "recordkeeping, documentation, and coding" remains in subsection (h)(4)(X). As long as the forensic documentation topic relates to chiropractic (as defined by the statutory scope of practice), then the course would be appropriate for approval. However, if the forensic documentation course deals with other fields outside of chiropractic, then it would not be appropriate for approval. No change was made in response to this part of TCA's comment.

Another point raised by TCA states that "[i]nternal diagnosis is a substantial area of doctoral study for chiropractors in Texas, yet it is not listed as an area of continuing education." The Board agrees with this. Internal diagnosis which does not relate to the biomechanics of the spine and musculoskeletal system or subluxation complex does not fall within the chiropractic scope of practice in Texas. TCA asserts that "continued [sic] education should follow the course of study required to earn a Doctor of Chiropractic degree, this [sic] allowing the continuation of one's education." The Board disagrees. Chiropractic colleges teach a broad curriculum sufficient to educate students from other states and countries that all have differing statutory scopes of practice. The practice of chiropractic in Texas, and thus the continuing education supplementing and enriching that practice, must abide by the limits of Texas statutory scope of practice. No change was made in response to this part of TCA's comment.

A further point raised by TCA questions why only §75.2(a)(1)(F) of this title is cited in the proposed amendment and not the entirety of §75.2. TCA asserts that this "could end up severely hamstringing CE education opportunities to create a well rounded DOCTOR of Chiropractic." The Board disagrees. Chiropractors will still have the opportunity to be trained in continuing education on topics related to recognizing conditions that require a diagnosis or treatment that does not fall within the chiropractic scope of practice. What will not be allowed is continuing education on the outright treatment of conditions that are squarely outside the chiropractic scope of practice. No change was made in response to this part of TCA's comment.

The last point raised by TCA states "Doctor of Chiropractic degree programs are founded upon a broad basic science foundation. It is maintenance of THAT knowledge that a doctor of chiropractic is required to pursue. We feel that limiting continuing education to ONLY that which directly applies to TOC 201.002, or its derivative TAC 75.17, and only to the application of that knowledge through TAC 75.2(a)(1)(F) is too restrictive to sufficiently ensure that the education of the Doctor of Chiropractic keeps pace with the ever changing world of health care." The Board disagrees that the proposed amendment is "too restrictive." What is taught in chiropractic college is broad, so as to allow the training of chiropractic students from all over the country and world. However, once a chiropractor becomes licensed in Texas, that chiropractor's practice is limited by the scope of practice defined in the Chiropractic Act. The continuing education required by Texas for licensees should relate to the chiropractor's actual practice in Texas, which again is limited by the scope of practice. If a chiropractor would like to "[keep] pace with the ever changing world of health care," he is free to do so, but would not receive credit for Texas chiropractic continuing education requirements. No change was made in response to this part of TCA's comment.

The second comment received urged the Board to not pass the proposed amendments because "this rule limits the chances a chiropractor has for improving his ability to practice and serve others." The Board disagrees. Chiropractors should only be practicing under the statutorily defined scope of practice, so limiting continuing education topics to those that fall within the scope of practice makes sense. The Board has chosen to also allow continuing education in those topics required to recognize when to refer a patient who may suffer from a condition that requires a diagnosis or treatment that is outside the chiropractic scope of practice. This is sufficient to allow a chiropractor continued training in 1) topics related to the areas in which he is allowed to practice and 2) topics related to the areas that are outside the scope of practice, but some knowledge is necessary in order to recognize and refer. The commenter suggests that adopting this proposed amendment will "[prevent] the growth of the chiropractic profession in Texas" and will "put [chiropractors] back in the dark ages where we have worked so hard to come out of." The Board disagrees. Chiropractic in Texas can only grow if changes are made to the Chiropractic Act; chiropractic should not "grow" through the Board allowing chiropractors to practice and be trained in topics that are outside the scope of practice. No changes were made in response to this comment.

The third comment (received after the official comment period) stated the proposed amendment "is damaging to the health of many thousands of suffering Texas citizens." The Board disagrees. As stated above, chiropractors should only be practicing under the statutorily defined scope of practice, so limiting continuing education topics to those that fall within the scope of practice makes sense and does not harm the public. The comment also states "limiting knowledge of nutrition by no longer allowing credit for the hours, will ultimately lead to doctors being more likely to miss a potential health issue that may respond to Chiropractic care, may be a reason not to administer Chiropractic care or may be a reason to refer to another provider." The Board disagrees. Continuing education on nutrition is currently allowed and will continue to be allowed, but there must be some connection to the chiropractic scope of practice or a chiropractor's duties under §75.2(a)(1)(F) of this title, relating to Proper Diligence and Efficient Practice of Chiropractic. No changes were made in response to this comment.

The fourth comment (received after the official comment period) stated "[i]t is deleterious to the citizens of Texas and to the profession to make rules that will limit the knowledge a DC has on which to base good patient care." The Board disagrees that the proposed amendment will do this. Again, chiropractors should only be practicing under the statutorily defined scope of practice, so limiting continuing education topics to those that fall within the scope of practice makes sense and does not harm the public. Additionally, continuing education will also be allowed for topics necessary for a chiropractor to comply with §75.2(a)(1)(F) of this title, relating to Proper Diligence and Efficient Practice of Chiropractic. No changes were made in response to this comment.

The fifth comment (received after the official comment period) was from the Education Chairman of the TCA. This comment opposed the proposed rule amendment because "[f]or the safety of the public, it would make more sense to encourage more breadth of approved CE material to assure Texas chiropractors remain completely qualified to appropriately handle all who come to our

offices appropriately...whether that is direct treatment or referral to another professional." In fact, these are exactly the topics of continuing education the Board feels are appropriate and will approve those topics dealing with general health and wellness, those topics within the scope of practice, and those topics necessary for a chiropractor to refer a patient to an appropriate health care provider. However, the Board does not feel that continuing education should be approved for topics dealing with the treatment of conditions outside the chiropractic scope of practice, and the Board feels that the rule as adopted is adequate. No change was made in response to this comment.

The fifth comment also states that §201.356(a)(2) of the Chiropractic Act does not support the proposed rule amendment. That section states "The board by rule shall adopt requirements for mandatory continuing education for license holders in subjects relating to the practice of chiropractic." The commenter remarked that the Act says "relating to the practice of chiropractic" and not "limited to the practice of chiropractic." The Board does not feel that the phrase "relating to the practice of chiropractic" should allow continuing education in just anything, especially topics relating to treatment of conditions outside the chiropractic scope of practice. If a continuing education topic is "related to" the practice of chiropractic (as "the practice of chiropractic" is defined by §201.001 of the Chiropractic Act), then it will likely be approved. Oral comment by the Education Chairman at the Board's May 23, 2013, meeting clarified that he was not arguing for approval of courses dealing with treatment of disorders outside the chiropractic scope of practice. No change was made in response to this comment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic; §201.356 requires the Board to adopt rules concerning continuing education.

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course.

(1) The application shall be on a form provided by the board. The application form must include the course title, subject and description, the number of requested credit hours, the date, time and location of the course, the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor.

(2) In addition to the application form, a detailed hour-by-hour syllabus of the course shall be submitted to the board. The syllabus must provide detailed information sufficient to inform the board of the course material being taught in each hour block. If the course is taught by more than one instructor, the syllabus must also list the name of the instructor of each hour block.

(3) Finally, the curriculum vitae of each instructor shall be submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee as set by the board for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all courses offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (j) of this section.

(e) Approval. The board will notify, in writing, a sponsor of approval. Approval of each continuing education course is valid for one calendar year only.

(f) Rejection. The board will notify, in writing, a sponsor of any rejection and the basis for the rejection.

(g) Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §73.3 of this title (relating to Continuing Education).

(h) Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a curriculum vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency;

(3) relate to the chiropractic scope of practice, as defined by the Texas Occupations Code §201.002, and §75.17 of this title (relating to Scope of Practice), or to knowledge necessary for a licensee to comply with §75.2(a)(1)(F) of this title (relating to Proper Diligence and Efficient Practice of Chiropractic); and

(4) be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other public health issues identified by the board as provided under §73.3(b)(2)(A)(iv) of this title.

(i) The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(j) Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request;

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course; and

(7) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(k) The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

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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Yvette Yarbrough
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Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6716

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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.21

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.21, concerning Acupuncture, to clarify that all therapeutic modalities including acupuncture provided by a Doctor of Chiropractic in Texas must comply with the chiropractic scope of practice as defined by Chapter 201 of the Occupations Code (the Chiropractic Act). This rule amendment is adopted without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10071) and will not be republished.

The Board proposed and now adopts this amendment to make explicitly clear that any acupuncture, acupressure, and meridian therapy (in addition to any other therapeutic modality) must be done in accordance with the legislatively defined scope of practice for chiropractic.

Comments received in writing via mail, fax, and email were accepted by the Board from December 28, 2012, to January 28, 2013. Four comments were received by the Board on the proposed amendment during this time period. Two other comments were received by the Board after the comment period closed, but were considered by the Board. Additionally, a public hearing was held on February 19, 2013, at the request of both the AOMA Graduate School of Integrative Medicine and the Texas Association of Acupuncture and Oriental Medicine, in compliance with §2001.029(b) of the Government Code (the Administrative Procedure Act). At this hearing, the Board received the testimony of two commenters.

The first comment was received from the Texas Chiropractic Association (TCA), expressing "strong disagreement with this proposal." The comment states that acupuncture "is not referred to as a therapeutic modality at any point in this section of the rules" and that addressing "all therapeutic modalities" in the acupuncture rule would "cause further confusion." The TCA suggested further stakeholder discussions before adopting this rule. The Board disagrees. There is no change to the scope of practice by adopting this amendment. This amendment merely clarifies that treatment provided must comply with the statutory scope of practice. Acupuncture is known in the chiropractic community as a therapeutic modality, as are acupressure and meridian therapy - which are all referenced in §75.21. All of these therapeutic modalities should comply with the chiropractic scope of practice as defined by the Legislature in the Chiropractic Act. This amendment merely clarifies this for chiropractors in explicit language. No change was made in response to this comment.

The second comment was received from the Texas Association of Acupuncture and Oriental Medicine (TAAOM), objecting to the adoption of the amendment and requesting a public hearing. (Details of testimony from the public hearing are listed below.) TAAOM objects to the Board's use of Chapter 205 of the Occupations Code (the Acupuncture Act) as a basis for rulemak-

ing authority. The Board disagrees. Because §205.003 of the Occupations Code grants an exemption from the Acupuncture Act for health care providers acting strictly within their scope of practice, the Board must cite this exemption as a basis for its authority to pass rules regarding acupuncture. TAAOM also commented on the Board's scope of practice rule, which is not part of the rule amendment adopted here. TAAOM stated that they believe "a determination of the Board's 'legislatively defined scope of practice for chiropractic' cannot be made without a full and open review of the impact of the Third Court of Appeals decision. The Board disagrees. The Court of Appeals decision referenced by TAAOM dealt with needle electromyography (needle EMG), which is not related to acupuncture and as such does not impact the use of acupuncture by chiropractors. No change was made in response to this comment.

The third comment was received from the American College of Acupuncture and Oriental Medicine. This comment supported the statements of the TAAOM in the paragraph above. As detailed in the previous paragraph, the Board disagrees with the position of TAAOM and made no change in response to this comment.

The fourth comment was received from the AOMA Graduate School of Integrative Medicine. This comment opposed the proposed rule amendment, but did not explain the reasons why. A public hearing was requested. (Testimony from the public hearing with details on AOMA's opposition is described later in this preamble.)

The fifth comment (received after the official comment period) opposed the proposed amendment. The first point made was that the rule is unnecessary as the Chiropractic Act "mandates all of a chiropractor's practices already." The Board disagrees that the proposed amendment is unnecessary, as many chiropractors in Texas are not clear on the scope of practice as it relates to the performance of acupuncture by chiropractors. No changes were made in response to this part of the comment. The second point made was that acupuncture cannot be limited to improving the subluxation complex or the biomechanics of the musculoskeletal system, as it is not a treatment for disease. The Board disagrees with this point. If a chiropractor uses acupuncture to treat disorders that are outside the scope of chiropractic practice, then he/she is practicing outside the scope of chiropractic practice. The third point made was that in acupuncture, one cannot separate the musculoskeletal system/spine from other bodily functions. The commenter states that "acupuncture stimulates specific points on the surface of the body causing direct physiological reactions the [sic] rally the body's healing capacities; pointing it in the direction of health." The commenter further argues one acupoint could affect the musculoskeletal system in addition to a bladder condition. The Board believes what is being treated is key - if the subluxation complex or biomechanics of the spine or musculoskeletal system is treated by acupuncture, then that falls within the bounds of the chiropractic scope of practice. However, if the actual bladder condition (to use the commenter's example) is directly treated, then that treatment falls outside the scope of chiropractic practice. The fourth point made was that the Board should not attempt to limit the intention of the chiropractor in performing acupuncture. The Board disagrees. The statutory scope of practice of chiropractic in Texas necessarily limits what a chiropractor should intend to treat or improve. The commenter closes by saying that in his opinion "the leadership of the Texas Board of Chiropractic Examiners is and has been trying to interpret the Statute in a manner that restricts the chiropractor to the role of a technician or therapist. This is being done in an attempt to comply with 'mandates' from the Attorney General's Office, the Legislators and in direct response to the TMA lawsuit." The Board disagrees that it is interpreting the Chiropractic Act improperly. The Legislature has defined the chiropractic scope of practice in the Chiropractic Act, and the Board has a duty to abide by that statutory scope of practice in rulemaking actions. This proposed amendment does not limit scope of practice - it merely expressly states that acupuncture performed by a chiropractor must comply with the statutory scope of practice. No change was made in response to this comment.

The sixth comment (received after the official comment period) was received from the TCA (in addition to their previously submitted comment). The comment seems to focus on a proposed rule amendment for another rule, but was submitted regarding the proposed rule amendment at hand. The TCA expresses concern that "scope of practice can no longer be easily discerned by the typical DC or our patients (the public). These proposed changes appear to be driven by a need to further clarify the marketing and advertising of specific chiropractic services. Current rules, however, fail to appreciate the diversity of credentials that have been earned by Doctors of Chiropractic." The Board disagrees. No matter what credentials are earned by a chiropractor, he/she is limited in practice to the statutory scope of practice in Texas. The proposed rule amendment at hand does not make any changes to scope of practice - it merely states that any acupuncture performed by a chiropractor must comply with the statutory scope of practice in Texas. No changes were made in response to this comment.

During the public hearing held on February 19, 2013, the TAAOM and AOMA Graduate School of Integrative Medicine offered public testimony to the Board.

The TAAOM requested more stakeholder participation in amending this rule. The Board welcomes all stakeholder participation and did hold a meeting between the Board and interested stakeholders in the acupuncture community. During this meeting, concerns were expressed with chiropractors performing acupuncture that was outside the scope of practice. This rule amendment responds to some of those concerns. Next, TAAOM stated that a recent Third Court of Appeals decision regarding needle electromyography (needle EMG) had an impact on the use of needles by chiropractors for acupuncture. The Board disagrees with this. The Court of Appeals decision did not limit acupuncture by a chiropractor. The decision was limited to needle EMG, which is not statutorily defined as nonincisive as acupuncture is. Lastly, TAAOM objected to the use of Chapter 205 of the Occupations Code (Acupuncture Act) as an authority for the Board to promulgate rules regarding the use of acupuncture by chiropractors. As stated above, the Board disagrees. Because §205.003 of the Occupations Code grants an exemption from the Acupuncture Act for health care providers acting strictly within their scope of practice, the Board must cite this exemption as a basis for its authority to pass rules regarding acupuncture. No change was made in response to this testimony.

Finally, AOMA Graduate School of Integrative Medicine requested more dialogue between the Board and the acupuncture community regarding educational competencies of chiropractors performing acupuncture. He expressed a need to work together to establish these competencies, as well as determining who should teach these competencies and how these competencies should be assessed. The Board will continue to look at this issue to discern the adequacy of the current requirements in place for chiropractors to perform acupuncture. However, at

this time, the Board is focused on ensuring that chiropractors performing acupuncture are aware that they need to practice within the statutory scope of practice, as detailed in the proposed rule amendment. No change was made in response to this testimony.

At the May 23, 2013, Board meeting, the TAAOM gave further oral and written comment re-emphasizing its testimony from the public hearing and objection to the rule amendment. No change was made in response to this testimony.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.002, relating to the practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.002 defines the practice of chiropractic and the limits of chiropractic scope of practice. Additionally, this amendment is adopted under Texas Occupations Code §205.001, relating to the definition of acupuncture, and §205.003, relating to exemptions from the Acupuncture Act. Section 205.001 defines acupuncture as a nonsurgical, nonincisive procedure. Section 205.003 exempts from the requirements of the Acupuncture Act health care professionals licensed under a statute other than the Acupuncture Act and acting within the scope of their 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.

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §80.1, concerning Delegation of Authority, to specify when recent chiropractic college graduates may be delegated authority to perform adjustments and manipulations. This rule amendment is adopted with changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10072) and will be republished.

First, the amendment defines a "recent graduate" of chiropractic college as one who graduated from a Council on Chiropractic Education (CCE) accredited chiropractic college within the previous twelve (12) months. (Note that the proposed amendment specified six months instead of twelve. This change is in response to a comment, as detailed below. Also, the proposed amendment specified that the graduate must be currently enrolled in a postceptorship program offered by a CCE accredited chiropractic college. The adopted rule does not require participation in a postceptorship program. This change is in response to a comment, as detailed below.)

Second, the amendment allows licensees to delegate authority to recent graduates to perform chiropractic adjustments or manipulations, if the licensee is on-site at the time of the adjustment or manipulation.

Comments received in writing via mail, fax, and email were accepted by the Board from December 28, 2012, to January 28, 2013. One comment was received by the Board on the proposed amendment during this time period.

The comment was received from the Texas Chiropractic Association (TCA). TCA feels that the definition of "recent graduate" should include those who graduated within the past twelve (12) months, instead of six (6) months. They feel that twelve (12) months allows for a wider range of circumstances that graduates may face with respect to national board and jurisprudence exam dates, as well as other personal circumstances. It is pointed out that chiropractic college representatives indicate these situations are rare, and thus amending the time-frame to twelve (12) months should not have significant consequences for the Board's Enforcement Committee. The Board has considered TCA's position and has chosen to adopt the amendment incorporating this change.

Additionally, an oral comment received at the Board's May 23, 2012 meeting (Rules Committee) pointed out that participation in a postceptorship program should not be necessary. Some chiropractic colleges do not have postceptorship programs, so these students would be discriminated against through no fault of their own. The Board agreed with this comment and has chosen to adopt the amendment without the requirement of participation in a postceptorship program.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

§80.1. Delegation of Authority.

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of health care tasks to a qualified and properly trained person acting under a licensee's supervision consistent with the health and welfare of a patient and with proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

(1) rendering a diagnosis and prescribing a treatment plan; or

(2) performing a chiropractic adjustment or manipulation.

(c) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations.

(1) For students that have not completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed as part of a regular curriculum; and the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who is physically present in the treating room at the time of the adjustment.

(2) For students that have completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment

or manipulation, but must be on-site at the time of the adjustment or manipulation.

(3) The requirement that the supervising licensee must be physically present in the treating room does not apply to chiropractic college clinics.

(d) A licensee may allow or direct certain recent graduates of an accredited chiropractic college to perform chiropractic adjustments or manipulations. The chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation. A "recent graduate" is one who graduated from a chiropractic college accredited by the Council on Chiropractic Education (CCE) within the previous twelve (12) months.

(e) In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(f) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(g) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(h) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(i) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(j) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(k) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

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 May 28, 2013.

TRD-201302185
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: June 17, 2013
Proposal publication date: December 28, 2012
For further information, please call: (512) 305-6716

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5

The Texas Board of Professional Engineers (Board) adopts amendments to §137.5, concerning License Holder Notification Requirements, without changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1330) and will not be republished.

The adopted amendment to §137.5 makes a change to the rule title to make it clearer, without changing the meaning, while adding the notification requirement when the license holder is sanctioned by another state's engineering licensing board.

The Board received one comment on the posting of §137.5. The commenter believed that the word "sanction" in the change was "...too vague and unenforceable...". He claimed that the word sanction "...could mean a monetary fine, suspension, revocation, or even an award for observance of the law." The intent of the rule change is to cover any sanction approved by the other state's board.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 May 24, 2013.

TRD-201302156
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: June 13, 2013
Proposal publication date: March 1, 2013
For further information, please call: (512) 440-7723

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES

25 TAC §61.34, §61.41

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §61.34 and §61.41 concerning breast and cervical cancer services. Section 61.34 is adopted with changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9848). Section 61.41 is adopted without changes and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendments and consideration by the department of the sections for re-adoption without change implement the federal Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101 - 534, and its reauthorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105 - 340, which establish a program of grants to states, territories, and tribal organizations for early detection and prevention of mortality from breast and cervical cancer. The department, through a cooperative agreement with the Centers for Disease Control and Prevention, provides statewide access to high-quality breast and cervical cancer screening and diagnostic services for financially eligible Texas women who are unable to access the same care through other funding sources or programs. The primary purpose of the Breast and Cervical Cancer Service is to reduce mortality from breast and cervical cancer. Amendments to the rules are necessary to reflect current program policy due to updates in clinical guidelines and to increase flexibility in allowable billing for administrative and support services according to program policy.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, and 61.42 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, §§61.31 - 61.33, 61.36, 61.37, 61.39, and 61.42 are being re-adopted without changes.

SECTION-BY-SECTION SUMMARY

Amendments to §61.34 revise language to clarify client age eligibility requirements for breast and cervical cancer screening and diagnostic services.

Amendments to §61.41 remove allowable billing for administrative and support services to reflect current program policy.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

However, minor revisions included deleting the word "only" from §61.34(b) and (c) for clarification as follows.

Section 61.34(b) - A woman under age 40 that meets eligibility criteria is eligible for breast cancer diagnostic services.

Section 61.34(c) - A woman age 18 - 64 that meets eligibility criteria is eligible for cervical cancer diagnostic services.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

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

§61.34. Client Eligibility Requirements.

(a) In order for a woman to be eligible for Breast and Cervical Cancer Services, the woman must:

(1) have a family income that does not exceed 200% of the current federal poverty level; and

(2) not have access to third-party payment for screening and/or diagnostic services.

(b) A woman age 40 or older that meets eligibility criteria is eligible for breast cancer screening and diagnostic services. A woman under age 40 that meets eligibility criteria is eligible for breast cancer diagnostic services.

(c) A woman age 21 - 64 that meets eligibility criteria is eligible for cervical cancer screening services. A woman age 18 - 64 that meets eligibility criteria is eligible for cervical cancer diagnostic 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 May 31, 2013.

TRD-201302226
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: June 20, 2013
Proposal publication date: December 21, 2012
For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.27

The General Land Office (GLO) adopts an amendment to 31 TAC §15.27, relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1949). The text of the rule as adopted will not be republished. The amendment adds a new subsection (b) which certifies as consistent with state law the Plan, as amended by the Erosion Response Plan (ERP), which was adopted by Matagorda County (Matagorda) by Commissioners Court resolution on January 28, 2013.

Copies of Matagorda's ERP can be obtained by contacting Sally Davenport of Coastal Technology Corporation at (512) 236-8194 or s.davenport@texastechcorp.com and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Matagorda is a coastal county located adjacent to Brazoria, Calhoun, Jackson and Wharton Counties. Matagorda includes approximately 55 miles of beach bordering on the Gulf of Mexico along Matagorda Peninsula and Matagorda Island. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located within Matagorda.

Pursuant to §33.607 of the Coastal Public Lands Management Act of 1973 (Texas Natural Resources Code, Chapter 33) and the Beach Dune Rules (31 TAC §15.17) Matagorda has prepared an ERP and submitted it to the GLO for certification as an amendment to its Plan. Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §15.3), a local government with jurisdiction over Gulf beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. Matagorda amended its Plan to include the ERP by Commissioners Court resolution on January 28, 2013. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO under 31 TAC §15.3(o)(4).

THE MATAGORDA COUNTY BEACH AMENDMENTS

Matagorda has adopted an ERP and submitted it to the GLO for certification as an amendment to its Plan in accordance with 31 TAC §15.17 and §15.3(o) and Texas Natural Resources Code §33.607 and §61.011. Matagorda amended its Plan by Commissioners Court resolution on January 28, 2013 to adopt the ERP. Based on the information provided by Matagorda, the GLO has determined that the ERP is consistent with the Open Beaches Act, the Dune Protection Act, and the 31 TAC Chapter 15 and that the requirements of the ERP are incorporated into Matagorda's Plan and procedures for reviewing and approving permit applications. Therefore, the GLO finds that the approved amendments to the Plan are consistent with state law and hereby approves and certifies Matagorda's ERP.

REASONED JUSTIFICATION

The justification for the adopted amendment is that implementation of an ERP will preserve and enhance dunes, which delays erosion, reduces the intensity of storm surges and increases protection for infrastructure located in coastal areas. Construction standards established in the ERP will increase protection against erosion and storms for structures located within or landward of the dune conservation area. Construction requirements will reduce loss of life and reduce public expenditures associated with damage to and loss of public infrastructure due to erosion, storm damage, and disaster response costs. The identification of restoration areas in the ERP will focus mitigation and restoration efforts in areas that may be vulnerable to storm inundation and are potential avenues for floodwaters that may cause damage to public infrastructure and private properties. The setback line in the ERP allows for the formation of dunes, which maintains a natural buffer against normal storm tides and allows dune processes to function with minimal disturbance to the dune system and property owners. Preservation of and improvements to foredune ridges protect existing structures and properties against damage from storm surge and reduce the possibility of structures becoming located on state-owned submerged lands, which results in a loss to landowners and increases expenditure of public funds for removal of the unauthorized structures from public beaches. Improvements to beach access points preserve public access and protect against degradation of coastal areas by erosion and storm surge.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the thirty (30) day comment period.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.27, relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan,

is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053(a)(10) and §33.2051(c). The applicable CMP goals and policies are found under 31 TAC §501.11, relating to Goals, and §501.26, relating to Policies and Construction in the Beach/Dune System. The GLO reviewed the amendment for consistency and determined that the amendment is consistent with the Beach/Dune regulations and the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted rule amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §33.607 and §61.011 relating to GLO's authority to adopt rules to preserve and enhance the public's right to access the public beach and reduce public expenditures from erosion and storm damage to public and private property, including public beaches.

Texas Natural Resources Code §§33.601 - 33.613 and §61.015 are affected by the adopted amendment.

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 June 3, 2013.

TRD-201302250
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: June 23, 2013
Proposal publication date: March 22, 2013
For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 28, 2013, adopted amendments to §§57.971 - 57.973, 57.976, 57.981, 57.982, 57.992, and 57.996, concerning Statewide Recreational and Commercial Fishing Proclamation. Section 57.976 is adopted with changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1103). Sections 57.971 - 57.973, 57.981, 57.982, 57.992, and 57.996 are adopted without changes and will not be republished.

The change to §57.976, concerning Importation of Aquatic Animal Life, alters proposed subsection (d) to clarify that the provision applies to an aquatic wildlife resource possessed in state waters that was obtained in the Exclusive Economic Zone (EEZ) in violation of any applicable federal law. As proposed, the provision created a state offense for possession in state waters of an aquatic wildlife resource taken in the EEZ in violation of any of four broad categories of violations (take during a closed season, within a protected length limit or in excess of the daily bag limit, with any gear or device prohibited by federal law, or without a license or permit required by federal law). Although the list of categories probably captures every circumstance under which aquatic wildlife resources can be taken, it was not intended to be an exhaustive or exclusive list. The change makes it clear that provision applies to any illegal take of aquatic wildlife resources in the EEZ.

The amendments include changes occurring as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §57.971, concerning Definitions, adds new definitions for "crab" and "handfishing," eliminates a redundancy in the definition of "purse seine," and clarifies the definitions of "trap" and "residence." The amendment adds new paragraph (9) to define "crabs" as "all species within the families Portunidae and Menippidae." Under Parks and Wildlife Code, §78.102(1), crabs are defined as "all species within the families Portunidae and Xanthidae." There is no universal method or system for assigning taxonomic rank to organisms. The generally accepted goal of taxonomy is to group organisms by similarities of function, structure, or genetics; however, because scientific investigations continue to reveal previously unknown information about specific organisms or groups of organisms, their taxonomic designations can be changed, even though the organisms themselves remain unchanged. Recent generally accepted taxonomic revisions have split the family Xanthidae into seven new families, one of which (Mennipidae) contains species of crabs indigenous to Texas. The amendment reflects recent changes in taxonomic nomenclature with respect to crabs.

The amendment creates new paragraph (25), which defines "handfishing" as "fishing by the use of hands only and without any other fishing devices such as gaff, pole hook, stick, trap, or spear." The definition is a verbatim repetition of the statutory definition of handfishing in Parks and Wildlife Code, §66.115(a), with the exception of the word "stick." The department has determined that although it is clear from the grammatical constructions "use of hands only" and "such as...", followed by a list of gears, that the intent of the statute is to restrict handfishing solely to the use of hands, it is necessary to clarify that in addition to the statutory proscription on the use of gaffs, pole hooks, traps, or spears, the use of sticks is also unlawful.

The amendment deletes paragraph (34), the current definition of "permanent residence," in order to create a new definition of "residence" in new paragraph (37).

The amendment creates new paragraph (37), which defines "residence." The intent of the current definition of "permanent residence" is to prevent the use of a temporary accommodation as a final destination for purposes of avoiding compliance with possession limits and documentation requirements. The department considers that a person may maintain more than one residence and should not be required to return to his or her domicile with a daily bag or possession limit. Therefore, the department has determined that the current rule is unintentionally restrictive and modifies it to define a "residence" as "a permanent structure where a person regularly sleeps and keeps personal belongings such as furniture and clothes,"

while retaining the current prohibition on temporary abodes or dwellings such as a hunting or fishing club, club house, cabin, tent, or trailer house or mobile home used as a hunting or fishing camp, or any hotel, motel, or rooming house. The amendment eliminates the current reference to "hunting, fishing, pleasure, or business trip" and replaces it with "temporary basis." The department has determined that the rule should not attempt to characterize or list the possible purposes for the use of an accommodation but instead establish the permanency of use.

The amendment to current paragraph (35), regarding "purse seine (net)" removes the word "net," which is redundant.

The amendment to current paragraph (42), regarding the definition of "trap," clarifies the current definition by appending to it a list of examples of devices (box, barrel, or pipe) the department considers to meet the criteria established by the current definition.

The amendment to §57.972, concerning General Rules, updates the taxonomic names of sawfishes, clarifies an existing rule governing the use of boats to drive fish, and remove references to possession of red drum tags. As discussed in the amendment to §57.971 regarding crabs, the taxonomic designations of organisms are not fixed. Similar to the case of crabs, the scientific names of sawfishes have been changed. The amendment to subsection (f) reflects the change.

Under current subsection (g)(7), it is unlawful for any person to use any vessel to harass fish. The amendment alters subsection (g)(7) by eliminating the word "harass" and replacing it with the words "harry, herd, or drive," including a proscription on the operation of any vessel "in a repeated circular course," and makes it clear that the actions described in the paragraph must be "for the purpose of or result in the concentration of fish for the purpose of taking or attempting to take fish." The amendment is necessary because the department has determined that it is important to provide a clearer articulation of the acts or actions the department considers to constitute the use of boats to move fish for purposes of take.

The amendment to subsection (g) also eliminates current paragraph (13)(G) and (I), concerning the possession and use of red drum tags. Under the current rules, a person may catch and retain only one red drum of greater than 28 inches in length, which must be tagged with the red drum tag from the person's fishing license, and a person may exchange a used red drum tag for a bonus red drum tag and then retain another oversize red drum; however, no person may be in simultaneous possession of a red drum tag and a bonus red drum tag, or the exempt equivalents. The current rules were promulgated at a time when the department was concerned about red drum populations and needed to get better statistics concerning their harvest. Long-term department trend data indicate that oversize red drum constitute less than 3% of the total red drum harvest; therefore, there is no longer a need to obtain highly detailed harvest information or to prohibit the simultaneous possession of a red drum tag and a bonus red drum tag.

The amendment to §57.973, concerning Devices, Means, and Methods, consists of several actions. The amendment alters current subsection (b) to list places where angling is restricted solely to the use of pole-and-line devices. Provisions regarding those places where the number of devices that may lawfully be employed are regulated have been relocated to new subsection (c). With the exception of subsection (b)(4), the changes are nonsubstantive. Subsection (b)(4) adds Canyon Lake Project #6 to the list of places where angling is restricted solely to pole-and-line. Within the City of Lubbock there are a series of urban lakes, and all of the waterbodies except one (Canyon Lake Project #6) are classified as community fishing lakes (CFLs), on which angling is by rule restricted solely to pole-and-line. The Canyon Lake Project #6 lake is 82 acres, which makes it slightly larger than the 75-acre minimum for established by rule for CFLs. Under the provisions of the subchapter, CFLs have a specific set of regulations on catfish harvest and gear usage. Confusion exists among local anglers in the Lubbock area regarding the regulations in effect on Canyon Lake Project #6. The department has determined that for purposes of consistency and alleviation of angler confusion, the harvest regulations on Canyon Lake Project #6 should be the same as the other CFLs: a five-fish daily bag limit for channel and blue catfish (no minimum length limit), methods restricted to pole-and-line only, and no more than two devices per person.

The amendment alters current subsection (f) by adding new paragraph (8) to govern handfishing. The Texas Legislature in 2011 enacted House Bill 2189, which amended Parks and Wildlife Code by adding §66.115, making it lawful to "fish for catfish by use of the hands only and without any other fishing device such as a gaff, pole hook, trap, or spear." The amendment replicates the statute in rule for ease of reference and recapitulates that it is unlawful to place or use a trap for the purpose of taking catfish. The amendment also alters current subsection (f)(13) by removing the word "net" from the initial phrase "purse seine (net)." Because "purse seine" is defined under §57.971 as a net, the phrase is redundant.

The amendment to §57.976, concerning Possession of Wildlife Resource; Importation, retitles the section "Importation of Aquatic Animal Life," removes the provisions concerning possession of wildlife in current subsection (a), and adds provisions clarifying the legal status of aquatic animal life taken in the EEZ under federal jurisdiction. The department has determined that the provisions of current §57.976(a), which apply to the possession of resources, would be more appropriate as part of §57.981, concerning Bag, Possession, and Length Limits. The remaining provisions, with the addition of the provisions that apply to resources brought into to state waters from the EEZ, have been located in §57.976, concerning Importation of Aquatic Animal Life. The state of Texas has management jurisdiction for fisheries resources in state waters (which extend nine nautical miles from the Texas coast), but the area from the seaward edge of state waters for a distance of 191 nautical miles fall within federal management jurisdiction. In some cases, the bag and possession limits in state waters for certain species differ from those in federal waters for those species. It is common for state game wardens to encounter persons in state waters who possess aquatic animal life that was unlawfully taken in federal waters. At the current time, such cases cannot be filed in a state jurisdiction; however, increased caseloads in federal courts have caused federal prosecutors to become increasingly selective about which cases to prosecute. This has led to a perception that compliance with federal resource conservation regulations is unnecessary, which is injurious to Texas aquatic animal life because it is a shared resource. The amendment makes it a violation of state law to possess aquatic animal life in Texas that was unlawfully taken in violation of federal law in the EEZ. The amendment is necessary to encourage the angling public to comply with resource conservation regulations irrespective of jurisdiction.

The amendment to §57.981, concerning Bag, Possession, and Length Limits, adds a provision concerning the applicability of possession limits and import provisions from current §57.976 concerning possession of resources (covered in the discussion of the amendment to §57.976). In 2010 the department restructured hunting and fishing regulations to separate hunting rules from fishing rules and recreational fishing rules from commercial fishing rules. In the process, the department overlooked a provision governing the endpoint of the applicability of possession limits. That provision, which states that for all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed, has been added to §57.981 as subsection (a). The provisions being relocated from §57.976 are in new §57.981(c)(4).

The amendment to §57.981 also alters current harvest regulations for largemouth bass on Kurth Reservoir, a 726-acre reservoir located approximately five miles north of Lufkin. Current use is recreation, but the City of Lufkin has plans to supply water for mining ventures. Current harvest regulations for largemouth bass consist of a 14-inch minimum length limit and a five-fish daily bag limit. Kurth currently supports a high-quality largemouth bass fishery, as reflected in population sampling and anglers' catches. Staff believes these metrics indicate the reservoir has the potential to develop into a trophy bass fishery. A sample of registered anglers who had purchased a 2011 access permit to the reservoir were sent a questionnaire on their opinion of the overall fishery and current largemouth bass regulations. Survey respondents were very satisfied with the fishery, and 65% indicated they would like more restrictive largemouth regulations. The amendment establishes a maximum length limit of 16 inches, which is intended to increase numbers of trophy-sized bass in the population by providing protection to large bass currently vulnerable to harvest (greater than 14 inches). Allowing harvest of bass 16 inches or shorter also could decrease intraspecific competition and increase growth rates. The amendment allows one fish of 24 inches or greater to be retained alive in a live well for purposes of immediate weighing using personal scales. Bass weighing 13 pounds or more may be retained for donation to the ShareLunker Program; otherwise, fish must be immediately released.

The amendment to §57.981 also alters current harvest regulations for largemouth bass on Lake Jacksonville, a 1,206-acre reservoir located approximately 20 miles south of Tyler. The current 18-inch minimum length and five-fish daily bag limit was established in September 2000, due to angler concerns about the scarcity of fish larger than the 14-inch statewide minimum length. The current regulation has been successful in restructuring the largemouth bass population and producing more fish 14 inches or longer. Recently, largemouth bass tournament angling has become increasingly popular, with Lake Jacksonville hosting at least three weekly tournaments. With the increase in tournament activity, anglers requested being allowed to weigh in 14-18 inch bass. The amendment is intended to allow bass to be weighed-in during tournaments and to facilitate the harvest of additional bass, but still provide some harvest protection for bass in the 14-to-18-inch size range. In an on-line survey designed to evaluate angler opinion on possible changes to bass regulations, 91 anglers responded to the survey with two-thirds in favor of the regulation.

The amendment to §57.982, concerning Crabs and Ghost Shrimp, removes a historical reference to the previous scientific name for ghost shrimp. The change is nonsubstantive.

The amendment to §57.992, concerning Bag, Possession, and Length Limits, alters subsection (a) to clarify that the possession limit applies to aquatic animal life possessed or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which the possessor has a receipt or invoice identifying the person the aquatic life was obtained from, the number and species, date of sale, and any other information required to be on a sales ticket or invoice. The clarification is necessary to clearly delineate the standards that apply to possession of aquatic animal life in excess of possession limits.

The amendment also eliminates the special regulations for black drum and sheepshead, which are no longer necessary because commercial and recreational regulations are now in different divisions of Chapter 57.

The amendment to §57.996, concerning Crabs and Ghost Shrimp, removes a historical reference to the previous scientific name for ghost shrimp and reflects that ghost shrimp may not be retained for commercial purposes. The change is nonsubstantive.

The amendment to §57.971 will function by establishing definitive meanings for words and terms used in the various subchapters for purposes of compliance and enforcement.

The amendment to §57.972 will function by updating taxonomy, providing greater clarity to existing rules, and eliminating certain tag-possession requirements.

The amendment to §57.973 will function by reorganizing the section into a more intuitively navigable set of provisions, implementing Community Fishing Lake harvest requirements on a lake, and repeating statutory provisions regarding handfishing.

The amendment to §57.976 will function by renaming the section, reorganizing its contents, and clarifying the legal status of aquatic animal life taken in the EEZ under federal jurisdiction.

The amendment to §57.981 will function by asserting applicability of possession limits and import provisions formerly in another section and altering harvest regulations on various lakes and reservoirs.

The amendment to §57.982 will function by eliminating unnecessary language.

The amendment to §57.992 will function by clarifying the applicability of possession limit requirements and eliminating duplicative language.

The amendment to §57.996 will function by eliminating unnecessary language.

The department received three comments opposing the adoption of the portion of the proposed amendment to §57.971 that affects fish harassment. All three commenters articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department response to each, follow.

One commenter opposed adoption and stated that the rule penalizes people who know how to find fish. The department disagrees with the comment and responds that the amendment simply clarifies an existing law; under current rule it is unlawful to use a boat to herd fish and the rule has been in effect for many years. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule as proposed is insufficient because it does not prohibit the use of a boat to prevent other people from catching fish. The department disagrees with the comment and responds that under Parks and Wildlife Code, §62.0125, it is an offense for any person to intentionally interfere with another person lawfully engaged in the process of hunting or catching wildlife or to intentionally harass, drive, or disturb any wildlife for the purpose of disrupting a person lawfully engaged in the process of hunting or catching wildlife. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should retain the current rule as it is written because it prohibits the harassment of fish without regard to method. The commenter stated that the rule as proposed, by prohibiting specific actions rather than a specific effect, would narrow the types of behavior that could be construed as fish harassment. The department disagrees with the comment and responds that the rule as adopted clearly states that the offense of fish harassment includes but is not limited to the actions listed in the section. No changes were made as a result of the comment.

The department received 23 comments supporting adoption of the proposed amendment to §57.971 that affects fish harassment.

No groups or associations commented in opposition to adoption of the proposed amendment to §57.971 that affects fish harassment.

The Port Aransas Boatmen's Association and Wade, Paddle, and Pole supported adoption of the proposed amendment to §57.971 that affects fish harassment.

The department received eight comments opposing the adoption of the portion of the proposed amendment to §57.971 regarding possession of red drum tags. Of the eight comments, four articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department response to each, follow.

One commenter opposed adoption and stated that the bag limit for red drum should be reduced to one. The department disagrees with the comment and responds that the intent of the rulemaking is to remove an offense which is no longer necessary, not to adjust bag limits. No changes were made as a result.

Two commenters opposed adoption and stated that the rule as proposed would result in population declines because anglers will have two tags available for use instead of one. The department disagrees with the comments and responds that stock assessments indicate that oversize red drum constitute less than 3% of the total harvest; therefore, populations can easily withstand significant additional angling pressure. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the public is accustomed to the rule the way it is and there is no beneficial reason to change it. The department disagrees with the comment and responds that since there is no biological reason to continue to prohibit the simultaneous possession of both a red drum tag and a bonus red drum tag, there is no reason to retain the rule. No changes were made as a result of the comment.

The department received 13 comments supporting adoption of the proposed amendment to §57.971 regarding possession of red drum tags.

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.971 regarding possession of red drum tags.

The department received four comments opposing the adoption of the portion of the proposed amendment to §57.981 that creates a new definition for "residence."

Three commenters stated that the term "residence" should include temporary accommodations such as hotels and lodges, because otherwise people are restricted to two daily bag limits (one possession limit) before they must take the fish to a permanent residence, eat the fish, or transfer the fish to another person. The department disagrees with the comment and responds that bag and possession limits are established to protect aquatic wildlife resource populations from overharvest. Based on current levels of angling pressure, allowing temporary accommodations to function as final destinations would result in elevated, sustained negative impacts on fish populations, since every angler would be able to retain an unlimited number of daily bag limits. If the department were to include temporary accommodations as final destinations, it might be necessary to reduce bag limits on certain species in order to prevent overharvest, which is undesirable. The department also notes that the rule as adopted does not alter the current prohibition on the use of temporary accommodations as final destinations. No changes were made as a result of the comments.

The department received 25 comments supporting adoption of the proposed amendment to §57.981 that creates a new definition for "residence."

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.981 that creates a new definition for "residence."

The department received no comments opposing adoption of the portion of the proposed amendment to §57.973 that implements Community Fishing Lake harvest regulations on Canyon Lake Project #6 in Lubbock County.

The department received seven comments supporting adoption of the proposed amendment to §57.973 that implements Community Fishing Lake harvest regulations on Canyon Lake Project #6 in Lubbock County.

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.973 that implements Community Fishing Lake harvest regulations on Canyon Lake Project #6 in Lubbock County.

The department received no comments opposing adoption of the portion of the proposed amendments to §57.971 and §57.973 that affect handfishing.

The department received 10 comments supporting adoption of the proposed amendments to §57.971 and §57.973 that affect handfishing.

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.971 and §57.973 that affect handfishing.

The department received four comments opposing adoption of the portion of the proposed amendment to §57.976 that establishes an offense for possessing in state waters aquatic wildlife resources that were illegally taken in federal waters. Of the four commenters, three offered a reason or rationale for opposing adoption. Those comments, accompanied by the department response to each, follow.

One commenter opposed adoption and stated that state game wardens should enforce only state laws, that it is difficult to determine that a resource has been illegally taken in federal waters, and that federal laws are too conservative, ridiculous, and unrealistic. The department disagrees with the comment and responds that Texas game wardens are commissioned to enforce federal law and do so on a routine basis. The rule is necessary because federal prosecutors, due to crowded venues, cannot prosecute every case brought to them by Texas game wardens. The department believes that this leads to a belief by some people that resource laws can be violated in federal waters with little chance of being prosecuted. Because the resource is a shared resource, the department believes that ultimately, disregard for the law in federal waters harms the resources in state waters. The department further responds that state game wardens will be able to effectively determine if resources have been taken illegally. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal rules in the Exclusive Economic Zone are not based on science. The department neither agrees nor disagrees with the comment and responds that the rule is intended to address an enforcement issue and is not intended to address the federal rulemaking process. No changes were made as a result of the comment.

One commenter opposed adoption and stated that state district courts are just as overwhelmed as federal courts and that the department should encourage federal prosecutors to increase their enforcement efforts. The department disagrees with the comment and responds that the offense created by the amendment is a Class C Misdemeanor and would be heard in a Justice of the Peace court rather than a state district court. The rule as adopted would not impact the department's ability to file cases in federal court, but would provide an alternative. No change was made as a result of the comment.

The department received 16 comments supporting adoption of the proposed amendment to §57.976 that establishes an offense for possessing in state waters aquatic wildlife resources that were illegally taken in federal waters.

The Port Aransas Boatmen's Association opposed adoption of the proposed amendment to §57.976 that establishes an offense for possessing in state waters aquatic wildlife resources that were illegally taken in federal waters.

No groups or associations commented in support of adoption of the proposed amendment to §57.976 that establishes an offense for possessing in state waters aquatic wildlife resources that were illegally taken in federal waters.

The department received one comment opposing adoption of the portion of the proposed amendment to §57.981 that affects largemouth bass regulations on Lake Jacksonville. The commenter stated that anglers should not be able to retain fish smaller than 18 inches in length for any purpose. The department disagrees with the comment and responds that mortalities incidental to temporary retention will not be numerous enough to negatively impact fish populations. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the proposed amendment to §57.981 that affects largemouth bass regulations on Lake Jacksonville.

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.981 that affects largemouth bass regulations on Lake Jacksonville.

The department received no comments opposing adoption of the portion of the proposed amendment to §57.981 that affects largemouth bass regulations on Kurth Reservoir.

The department received seven comments supporting adoption of the proposed amendment to §57.981 that affects largemouth bass regulations on Kurth Reservoir.

No groups or associations commented in support of or opposition to adoption of the proposed amendment to §57.981 that affects largemouth bass regulations on Kurth Reservoir.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.971 - 57.973, 57.976

The amendments are adopted under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 46; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §66.115, which authorizes the commission to promulgate regulations concerning handfishing; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§57.976. Importation of Aquatic Animal Life.

(a) No person may import into this state or possess an aquatic wildlife resource taken outside this state, unless the person possessing the aquatic wildlife resource produces upon demand by a game warden a valid fishing, or other applicable license, stamp, tag, permit, or document for the state or country in which the wildlife resource was legally taken.

(b) A person possessing a wildlife resource under this section must produce upon demand by a game warden a valid driver's license or personal identification certificate.

(c) Any person may possess a wildlife resource killed outside this state that is listed in this state as threatened or endangered, provided the person possesses proof that the animal or bird was lawfully killed.

(d) No person in this state may possess an aquatic wildlife resource taken in the Exclusive Economic Zone in violation of any applicable federal law, including but not limited to aquatic resources taken:

(1) during a closed season provided by federal law;

(2) within a protected length limit or in excess of the daily bag limit established by federal law;

(3) with any gear or device prohibited by federal law; or

(4) without a license or permit required by federal law.

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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TRD-201302203
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981, §57.982

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992, §57.996

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 28, 2013, adopted the repeal of §65.30; amendments to §§65.3, 65.34, and 65.40; and new §65.30, concerning the Statewide Hunting Proclamation, without changes to the proposed text as published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1117).

The repeal of §65.30, concerning Pronghorn Antelope Permit, is necessary to adopt new §65.30.

The amendment to §65.3, concerning Definitions, removes the definition of "agent" and adds a definition of "landowner." Under current rule, the term "agent" is defined as "a person authorized to act on behalf of the landowner," but the term "landowner" is not defined. The amendment defines the term "landowner" as "any person who has an ownership interest in a tract of land, and includes a person authorized by the landowner to act on behalf of the landowner as the landowner's agent." The intent of the amendment is to make clear to whom the terms "landowner" and "agent" refer for purposes of compliance and enforcement.

New §65.30, concerning Pronghorn Antelope Permit, sets forth the method the department utilizes to determine and allot the harvest of pronghorn antelope and the places and conditions under which permits issued under the section are valid. Under Parks and Wildlife Code, §61.057, no person may hunt an antelope without first having acquired an antelope permit issued by the department. Under Parks and Wildlife Code, §61.051, the department is required to conduct scientific studies and investigations of game animals to determine, among other things, supply, sex ratios, and the effects of any factors or conditions causing increases or decreases in supply. Under Parks and Wildlife Code, §61.052, the commission is required to regulate the means, methods, places, and periods of time when it is lawful to hunt or possess game animals. In general, the new section preserves the contents of current §65.30 and makes conforming changes necessary to accommodate the amendment to §65.40, which allows the hunting of buck pronghorn antelope in certain places by means of a permit obtained directly from the department rather than from a landowner.

The amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, extends the period of validity of

MLDPs for mule deer to the last Sunday in January. The MLDP permit program was expanded to include mule deer in 2005. Unlike the MLDP program for white-tailed deer, which allows hunting from October until February, the mule deer MLDP permit period of validity was established to run concurrently with the season for white-tailed deer (the first Sunday in November to the first Sunday in January). Since its inauguration, the program has steadily grown. The number of cooperators has increased by nearly 350% and the acreage under management has nearly tripled. In recent years, the department has been approached by landowners and land managers with the idea of extending the period of validity. The department conducted a significant outreach effort over the past year and has determined that there is support for an extension of the mule deer MLDP period of validity.

The amendment to §65.40, concerning Pronghorn Antelope: Open Seasons and Bag Limits, implements an experimental season for the take of buck pronghorn antelope in certain areas of the state. Under Parks and Wildlife Code, §61.057, no person may hunt an antelope without first having acquired an antelope permit issued by the department. Under Parks and Wildlife Code, §61.051, the department is required to conduct scientific studies and investigations of game animals to determine, among other things, supply, sex ratios, and the effects of any factors or conditions causing increases or decreases in supply. Under Parks and Wildlife Code, §61.052, the commission is required to regulate the means, methods, places, and periods of time when it is lawful to hunt or possess game animals. Under current rule, the take of all pronghorn antelope is by permit only. The department manages pronghorn antelope populations by the concept of the "herd unit." A herd unit is an area containing similar pronghorn densities (during the timeframe of population surveys) and habitats. Some herd units are bounded by natural or man-made barriers that prevent or inhibit immigration/emigration. Other herd units are bounded by man-made infrastructure that facilitates a descriptive boundary but does allow immigration/emigration. The department conducts population surveys and collects harvest data annually to determine the percentage of each herd unit that may be harvested each year without causing depletion or waste. Permits are then issued to landowners, who distribute them to hunters at their discretion. Over the last 10-15 years, pronghorn antelope populations in portions of the northern Panhandle have increased steadily and continue to expand their range. As a result, permit demand has increased and staff time accommodating that demand has increased accordingly. The amendment would implement an experimental season in three herd units where staff believe that buck populations can sustain additional hunting pressure. The current bag limit and season length would be retained; however, no permits for buck pronghorn antelope would be issued to the landowners. Instead, the harvest of buck pronghorn antelope would be at the discretion of the landowner. In order to measure the impact of the experiment and to assist law enforcement personnel in identifying lawfully taken pronghorn antelope, the amendment also requires hunters to obtain a permit from the department and attach it to harvested bucks and to present each harvested buck at a check station. The amendment is intended to reduce the amount of time spent on permit issuance by staff, increase hunter opportunity, and provide greater convenience for landowners, hunters, and outfitters.

The amendment to §65.3 will function by providing definitive meanings for words and terms used in the subchapter.

New §65.30 will function by establishing the conditions under which buck pronghorn antelope may be hunted in certain herd units.

The amendment to §65.34 will function by lengthening the period of validity for MLDP for mule deer.

The amendment to §65.40 will function by establishing documentation and tagging requirements for the take of buck pronghorn antelope in specified areas of the state.

The department received two comments opposing adoption of the amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer. One commenter articulated a rationale or reason for opposing adoption. The commenter stated that the properties in the MLDP program for mule deer were too small and that harvest during the rut would cause overharvest of bucks. The department disagrees with the comment and responds that MLDP issuance for buck and antlerless deer on any property is predicated on a mandatory department-approved wildlife management plan (WMP) for the property. The WMP takes into account the size of the property, habitat conditions, and population indices to formulate a biologically sound harvest quota for that property. The harvest of antlerless mule deer is already controlled by means of a permit system; the department issues those permits on a very conservative basis. However, there is no limitation on the number of buck mule deer that a landowner may allow to be harvested on non-MLDP property. Therefore, MLDP permit issuance is actually a limitation on the number of buck deer that can be harvested. As a result, the department is confident that overharvest is not a concern. No changes were made as a result of the comment.

The department received 21 comments supporting adoption of the proposed amendment.

The department received two comments opposing the adoption of amended §65.40, concerning Pronghorn Antelope: Open Seasons and Bag Limits. Both commenters articulated specific reasons or rationales for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that allowing landowner-controlled harvest of buck pronghorn will result in overharvest and a decline in trophy-quality bucks. The department disagrees with the comment and responds that harvest within the experimental area will be closely monitored; if the department determines that depletion of the resource is occurring, the experimental season will be eliminated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is trying to "take over" antelope populations that belong to the landowners. The department disagrees with the comment and responds that under Parks and Wildlife Code, §1.011, all wild animals (including pronghorn antelope) are the property of the people of the state. Under Parks and Wildlife Code, Chapter 61, the department is required to provide open seasons if scientific investigations and findings of fact reveal that they may be safely provided. Chapter 61 also authorizes the Texas Parks and Wildlife Commission to establish the periods of time when it is lawful to hunt, take, or possess pronghorn antelope; the means, methods, and places in which it is lawful to hunt, take, or possess pronghorn antelope; the quantity, age or size, and, to the extent possible, the sex of the pronghorn antelope to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where pronghorn antelope may be hunted, taken, or possessed. In addition, hunting without landowner con-

sent continues to be an offense. No changes were made as a result of the comment.

The department received 10 comments supporting adoption of the proposed amendment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.30, 65.34

The amendments and new section are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §65.30

The repeal is adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals during each year or season; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.40

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed, and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of §§42.018, 42.0185, or 42.020, or other similar tagging requirements in Chapter 42.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.7, §23.8

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §23.7 and §23.8, concerning TRS' Code of Ethics for Contractors (Code of Ethics or Code) and related materials. The board adopts the amended sections without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 633), and they will not be republished.

Amended §23.7 reflects the current version of the Code adopted by the board in April 2012 and filed with the Office of the Sec-

retary of State. The amendments also update or clarify terminology involving the current Code and conform the section with the wording in the related rule, §23.8, which concerns ancillary reporting materials used in implementing the Code.

Amended §23.8 adopts by reference the latest version of the reporting memorandum approved by the executive director and filed with the secretary of state's office. The amendments reflect current terminology used in the Code and §23.7. The amendments also clarify references to the revised versions of the reporting memorandum and form and, as applicable, make such reference consistent with the wording used in connection with the updated Code adopted by reference in §23.7.

No comments regarding the proposed rules were received.

Statutory Authority: The amendments are adopted under 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.

Cross-Reference to Statute: Government Code §825.212, concerning a code of ethics for contractors.

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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Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: June 20, 2013,
Proposal publication date: February 8, 2013
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.21

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.21, relating to compensation subject to deposit and credit. The board adopts the amended section without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1845), and it will not be republished.

Section 25.21 addresses the types of compensation that are creditable for purposes of determining TRS member contributions and benefits. Before this amendment of §25.21, the section did not explicitly address workers' compensation as creditable compensation. The amended rule clarifies and provides notice of how TRS credits workers' compensation in determining benefits. With the change in the cost of unreported service increasing to the actuarial cost of the increased benefits associated with the additional compensation credit or service credit, the amended rule also provides that workers' compensation does not have to be purchased at an increased cost if the compensation is reported or verified to TRS by the end of the school year following the year in which it was paid. This amendment allows a member sufficient time to verify the compensation and pay the member contributions before the cost is increased.

No comments regarding the proposed rule were received.

Statutory Authority: The amended section is adopted under Texas Government Code §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The adopted amendments affect Texas Government Code §821.001(4), which defines "annual compensation," and Texas Government Code §822.201, which describes compensation subject to report, deposit, and 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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Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
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Proposal publication date: March 15, 2013
For further information, please call: (512) 542-6438

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SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

34 TAC §25.43, §25.47

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.43, relating to the cost for unreported service or compensation, and §25.47, relating to the deadline for verification of unreported compensation or service. The board adopts the amended sections without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1846), and they will not be republished.

Amended §25.43 adds subsection (g), which addresses the amount that must be paid to TRS to receive not only compensation credit for workers' compensation but also service credit associated with the workers' compensation. Under adopted §25.43(g), if the workers' compensation is reported or verified to TRS no later than the last day of the school year following the school year in which the workers' compensation is paid, the cost to establish the compensation and associated service credit is the amount of member contributions owed on the compensation. The cost of the compensation and associated service credit must be paid in a lump sum no later than the last day of the school year following the year in which the workers' compensation was paid. If the compensation and associated service credit are not verified or reported and the member contributions not paid by the end of the school year following the school year in which the workers' compensation was paid, the cost of establishing the compensation or service credit is the actuarial cost of unreported service or compensation described in §25.43(a).

Amended §25.47 adds subsection (d) to clarify that workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

No comments regarding the proposed rules were received.

Statutory Authority: The amendments are adopted under Texas 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.

Cross-Reference to Statute: The adopted amendments affect Texas Government Code §825.403 concerning the collection of member contributions.

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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Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: June 20, 2013
Proposal publication date: March 15, 2013
For further information, please call: (512) 542-6438

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SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §25.81

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.81, relating to out-of-state service eligible for credit. The board adopts the amended section without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1847), and it will not be republished.

Amended 25.81 requires a member to have worked in an otherwise eligible position in an out-of-state school for at least 90 days of a school year in order to purchase the related service credit. The amendment reflects the new 90-day standard adopted in §25.131 of this title (relating to required service) for establishing a creditable year of service credit. TRS implemented the new 90-day standard under §25.131 beginning with the 2011-2012 school year.

No comments regarding the proposed rule were received.

Statutory Authority: The amended section is adopted under Texas Government Code §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The adopted amendment affects Texas Government Code §825.401, which concerns out-of-state service.

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 31. EMPLOYMENT AFTER RETIREMENT
SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §31.14

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §31.14, relating to one-half time employment to establish a single standard for determining the amount of time that all service retirees can work without forfeiting the monthly annuity. The board adopts the amended section with changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1848). Those changes do not require republication of the proposed rule, but the adopted rule text will be republished.

The amendments to §31.14 address how one-half time employment of a retiree by an institution of higher education is determined. One-half time means working no more than the equivalent of four clock hours for each work day in that calendar month. The amendments provide a conversion method for determining the number of clock hours that can be worked under the limits for one-half time employment by a retiree. The amendments also direct that the number of hours of instruction in the classroom or lab be converted to clock hours using the conversion ratio, which takes into account not only the amount of time spent instructing students, but also the amount of preparation time, time spent grading work and submitting grades, and similar work related to the classroom instruction. The amended section eliminates the need to specifically include the many different terms used by employers to describe the amount of work performed by faculty by using a single standard of the amount of time in the classroom or lab to ensure consistent application of the limit.

TRS staff received comments from an individual suggesting that §31.14 be clarified to apply only to retirees employed after January 1, 2011, in conformity with current law, including other TRS return-to-work rules. Based on those comments, the board adopts a minor, clarifying change to the published text of proposed §31.14 to make clear that the section applies only to retirees employed after January 1, 2011.

Statutory Authority: The amendments are adopted under the following statutes: Texas Government Code §824.601(f), which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service; Texas Government Code §824.602(j), which relates to exceptions to loss of benefits on resumption of service and requires the board to adopt rules defining "one-half time basis"; and Texas Government Code §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 amendment affects Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of 4 clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) that is expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

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. EMPLOYER PENSION SURCHARGE

34 TAC §31.41

The Board of Trustees (board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §31.41, relating to the employment pension surcharge. The board adopts the amended section without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1850), and it will not be republished.

The amendments to §31.41 address the requirements for triggering payment of the pension surcharge owed by the employer who employs a retiree who retired September 1, 2005, or after and is working in a TRS-eligible position. The standard for triggering the surcharge before the 2013-2014 school year is working at least one-half the full-time load for a period of four and one-half months or more. Under §31.14 of this title (relating to one-half time employment), the standard for one-half time employment that avoids loss of the monthly annuity is working no more than the equivalent of four clock hours for each work day in the calendar month. In light of the confusion experienced by employers, the difficulty in communicating the two standards to employers and retirees, and the unanticipated cost to both parties when the work triggered the surcharges, amended §31.41 applies the same standard for one-half time employment to the standard of triggering payment of the surcharge.

The opening phrases of new subsections (i), (j), and (k) of this section address how the rules apply for school years prior to the 2013-2014 school year by following the existing requirements and standard for triggering payment of the surcharge.

No comments were received on the rule proposal.

Statutory Authority: The amendments are adopted under the following statutes: Texas Government Code §824.601(f), which authorizes TRS to adopt rules necessary for administering Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service; Texas Government Code §824.602(j), which relates to exceptions to loss of benefits on resumption of service and requires the board to adopt rules defining "one-half time basis"; and Texas Government Code §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 affect Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service.

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 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.4, relating to the employer health benefit surcharge under TRS-Care. TRS adopts the amended section without changes to the proposed rule text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1851), and it will not be republished.

Section 41.4 implements the statutory health benefit surcharge owed by a TRS-covered employer for each month that the employer reports that a retiree enrolled in TRS-Care is working in a position eligible for membership in TRS. The adopted amendments to §41.4 address the requirements for triggering payment of the health benefit surcharge. Currently, a health benefit surcharge is owed by the employer who employs a retiree who retired September 1, 2005, or after and who is working in a TRS-eligible position. Experience with using the standard for one-half time employment for retirees (equivalent of four clock hours for each work day in the calendar month) and the standard for one-half time employment eligible for membership (one-half the full-time load) to trigger payment of the health benefit surcharge revealed confusion on the part of employers, difficulty in communicating the two standards to the employers and retirees, and unanticipated cost to both when the retiree worked one-half time. The major changes in adopted §41.4 establish the same standard for triggering payment of the surcharge as is used for determining when retirees exceed allowable one-half time employment and lose their annuity under TRS rule §31.14 of this title, relating to one-half time employment.

The adopted amendments establish a new standard for triggering payment of the health benefit surcharge by incorporating the limit on one-half time employment after retirement that results in loss of the monthly annuity. Section 31.14 of this title establishes the standard for determining one-half time employment: retirees can work the equivalent of four clock hours for each work day in the calendar month without forfeiting their annuity for the month. Section 31.14 also establishes the ratio for converting course credits or semester hours to clock hours. The same standard under §31.14 for determining one-half time employment is incorporated into amended §41.4 for triggering payment of the pension surcharge. TRS will implement the newly incorporated standard under §41.4 beginning September 1, 2013.

The opening phrases of new subsections (b), (j), and (k) of this section address how the rules apply for school years prior to the 2013-2014 school year by following the existing requirements and standard for triggering payment of the health benefit surcharge.

The adopted section also deletes references to "TRS-covered employment," which unnecessarily restate existing law already specified in §41.4(a). Other non-substantive amendments are adopted for clarification purposes or to provide accurate internal references.

No comments were received on the rule proposal.

Statutory Authority: The amendments to §41.4 are adopted under the authority of §1575.052, Insurance Code, which authorizes TRS to adopt rules it considers necessary to implement and administer the TRS-Care program.

Cross-reference to Statute: The adopted amendments to §41.4 affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of the TRS-Care 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 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.10

The Teacher Retirement System of Texas (TRS) adopts amendments to §47.10, relating to qualified domestic relations orders. TRS adopts the amended section without changes to the proposed rule text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1853), and it will not be republished.

Section 47.10 concerns the determination of whether an order is a Qualified Domestic Relations Order (QDRO). A QDRO is a court order that has been reviewed by TRS and found to meet applicable requirements to allow TRS to make direct payment to an alternate payee identified in the order.

The adopted amendments establish a requirement that domestic relations orders entered by a court on September 1, 2013, or after must be in a form prescribed by TRS. TRS has provided a model order to aid parties in drafting a domestic relations order that met all the plan requirements to be a qualified order. Although most orders were based in large part on the model order, many parties included limiting language or additional requirements that were difficult for TRS to administer or required TRS to manually administer. The 82nd Legislature authorized TRS to require use of a prescribed form. The adopted amendments to §47.10 implement that statutory authority.

No comments were received on the rule proposal.

Statutory Authority. Amended §47.10 is adopted under Texas Government Code §804.003 and §804.005, which authorize TRS to adopt rules relating to QDROs, and Texas Government

Code §825.102, which authorizes TRS to adopt rules for the administration of the funds of the retirement system and the transaction of business. The amendments also are adopted in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

Cross-Reference to Statute. Amended §47.10 affects Texas Government Code §804.003, which sets out the requirements for QDROs; and 26 United States Code §414(p), a provision of the Internal Revenue Code relating to QDROs and qualified plans.

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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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9503, concerning Rules and Consequences for Residential Facilities, with changes to the proposed text as published in the March 29, 2013, issue of the *Texas Register* (38 TexReg 2087). Changes are described below in the agency's responses to public comments.

The amended rule allows a youth's stage in the TJJD rehabilitation program to be demoted for any major rule violation proven through a Level II due process hearing. This consequence is no longer limited to serious sexual misconduct, assault causing serious bodily injury, and violations eligible for referral to the Phoenix program.

Pursuant to Government Code §2001.036, TJJD has determined that an expedited effective date is necessary due to the potential for imminent peril to the safety and welfare of the youth and staff in TJJD facilities. Specifically, the agency has documented a significant increase in youth assaultive behaviors in recent years. The changes in rule are intended to curb this trend by allowing youth to receive immediate consequences for aggressive behavior, which is anticipated to act as a deterrent to youth, thus protecting the safety and welfare of youth and staff in TJJD facilities. The rule shall take effect immediately upon filing the adoption notice with the Office of the Secretary of State.

TJJD held a public hearing on April 22, 2013, and received verbal and written comments from Disability Rights Texas. A summary of the comments and the agency's responses are provided below.

Comment: The proposed changes in subsection (d)(7) delete the language requiring a "non-involved" staff to determine whether to hold a Level II hearing. It appears the intent of the proposed changes is to transfer the responsibility for recommending whether to conduct a Level II hearing to the superintendent or his or her designee. To ensure the integrity of the investigation, we recommend clarifying that the designated person responsible for conducting the investigation and making the recommendation as to whether to proceed with a hearing cannot have been involved in the incident.

Response: In the existing rule and the proposed rule, the facility administrator or designee is responsible for deciding whether to hold a Level II hearing. TJJD is not proposing any changes to this responsibility. However, this rule is not intended to establish procedural requirements for requesting and approving Level II hearings. These procedural requirements are addressed in 37 TAC §380.9555. No changes were made to the proposed rule text as a result of this comment.

Comment: Students with disabilities should not have their stage demoted for behavior caused by their disability. For such students, TJJD should consider two options. The first option is to mirror provisions in the Individuals with Disabilities Education Act (IDEA) that require manifestation determinations so that Level II hearings will analyze whether the youth's behavior was caused by or had a direct and substantial relationship to their disability. If this connection exists, the rule should exclude stage demotion as a possible consequence. The second option is to define the term "extenuating circumstances" to include behavior that is caused by or directly and substantially related to the youth's disability.

Response: TJJD agrees that a youth's disability should be taken into consideration when determining consequences, as allowed by current rules and practices concerning extenuating circumstances. TJJD disagrees that behavior caused by or directly and substantially related to a disability should automatically preclude using stage demotion as a consequence for major violations of facility rules. No changes were made to the proposed rule text as a result of this comment.

Comment: The rule should contain an exception for the violation of "Possession of Prohibited Items" for youth who used or intended to use the item to engage in self-harming behavior. Because such behavior is clearly a manifestation of disability, the rule should disallow stage demotions as a possible consequence.

Response: TJJD believes self-harming behavior may or may not be a manifestation of a youth's disability. Current rules governing Level II due process hearings provide a means for determining whether a youth's disability should be considered an extenuating circumstance. No changes were made to the proposed rule text as a result of this comment.

Comment: The agency should re-examine whether "Assault - Unauthorized Physical Contact with Another Youth (No Injury)" should result in a stage demotion as it does not entail intentional conduct.

Response: TJJD inadvertently omitted the word "intentionally" from the definition of this rule violation. In practice, intent is a required element to prove an allegation of Assault - Unauthorized Physical Contact with Another Youth (No Injury). The adopted rule text includes the word "intentionally" in subsection (i)(1).

The amended section is adopted under Human Resources Code §242.003, which authorizes TJJD to make rules appropriate to the proper accomplishment of its functions and to govern the schools, facilities, and programs operated by TJJD.

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. The purpose of this rule is to establish the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, must be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to a residential facility.

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

(1) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 of this title.

(3) Residential Facility--includes high and medium restriction residential placements.

(4) Attempting to Commit--engaging in conduct that amounts to more than mere planning, but failing to commit the intended rule violation.

(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) Rules in this policy may be restated or otherwise adapted to accommodate a particular program to help clarify expected behavior in that program. All adapted or restated rules must remain consistent with the general rules of conduct.

(2) The rules of conduct must be posted in a visible area accessible to youth in each facility and program.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or III due process hearing held in accordance with §380.9555 or §380.9557 of this title, respectively.

(5) Major rule violations require the completion of a formal incident report.

(6) A youth's disciplinary record consists only of rule violations that are proven through a Level I or II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively.

(7) An appropriate investigation must be started within 24 hours after a report of a major rule violation or a minor rule violation resulting in a referral to the security unit. Based on available evidence, the superintendent or designee must determine whether to hold a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record.

(8) 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 must be placed in the student benefit fund in accordance with §380.9555 of this title.

(9) Except as noted in paragraph (9) of this subsection, minor rule violations must be documented on the appropriate activity log. A formal incident report is not required.

(10) A minor rule violation that escalates to the point that the current program/activity cannot continue due to the disruption or that poses a substantial risk to personal safety or facility security must be documented on a formal incident report. In high restriction facilities, this type of minor rule violation also includes a referral to the security unit.

(11) Any time a formal incident report is prepared for an alleged rule violation, a copy of the incident report must be given to the youth within 24 hours after the alleged violation.

(12) Although certain rule violations may not result in immediate disciplinary consequences, a rule violation proven through a Level II due process hearing may be considered upon expiration of the youth's minimum length of stay in determining whether a youth is in need of additional rehabilitation.

(13) Each multi-disciplinary team must review all privilege suspensions for youth on its caseload at least once per week. The multi-disciplinary team may:

(A) lessen the duration of the suspension or allow the youth to accrue certain privileges for use after the period of suspension is complete as an incentive to display positive behavior; or

(B) extend (one time only) or modify an on-site privilege suspension issued by direct care staff if warranted by the youth's behavior.

(e) Consequences for High Restriction Facilities.

(1) Major Disciplinary Consequences.

(A) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when it is found that the youth engaged in certain aggressive behavior.

(B) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 of this title.

(C) Loss of Transition Eligibility--a youth who has not completed the minimum length of stay serves an additional month in high restriction facilities prior to becoming eligible for transition to a medium restriction facility under §380.8545 of this title. This consequence may only be issued if it is proven through a Level II due process hearing that the youth committed:

(i) assault causing bodily injury to youth or staff, as defined in subsection (i)(3) - (4) of this section; or

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

(D) 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 a major rule violation.

(2) Minor Disciplinary Consequences.

(A) Suspension of Privileges by Multi-Disciplinary Team--a youth has one or more privileges removed for up to 14 calendar days from the date of the multi-disciplinary team meeting or has his/her privileges adjusted to those associated with a lower stage until the next scheduled meeting. This consequence may be issued for major or minor rule violations. In order to issue this consequence, the multi-disciplinary team must:

(i) meet with the youth to discuss the youth's behavior and potential consequences;

(ii) consider any on-site suspension of privileges already imposed for the behavior; and

(iii) document the discussion of the youth's conduct and consequence imposed.

(B) On-Site Suspension of Privileges--a youth has one specific privilege removed for up to seven calendar days from the date of the violation or all privileges removed for up to three calendar days. This consequence may be issued by a staff member with direct supervisory responsibility for the youth after witnessing a major or minor rule violation. This consequence should be issued only after non-disciplinary interventions have been attempted. The staff member must document the conduct and consequence and discuss the consequence and the reasons for it with the youth.

(f) Consequences for Medium Restriction Facilities.

(1) Major Consequences.

(A) Disciplinary Transfer--a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 of this title. This consequence does not apply to youth who are on parole status in a medium restriction facility.

(B) Placement in the Phoenix Program--in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.

(C) Major Suspension of Privileges--a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.

(D) 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 a major rule violation.

(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph. Minor consequences may only be imposed following a Level III due process hearing held in accordance with §380.9557 of this title.

(A) Privilege Suspension--a suspension of one or more privileges for no more than 14 calendar days.

(B) Community Service Hours--disciplinary assignment of up to 40 hours in an approved community service assignment.

(C) Trust Fund Restriction--youth is restricted from accessing his/her accrued personal funds for up to seven calendar days.

(D) Facility Restriction--youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than approved constructive activities.

(g) Review and Appeal of Consequences.

(1) All minor disciplinary consequences issued by staff other than the youth's multi-disciplinary team must be reviewed for policy compliance by the youth's assigned case manager or dorm supervisor within one workday of issuance. All minor consequences issued by the youth's multi-disciplinary team must be reviewed for policy compliance and consistency by the facility administrator or designee.

(2) The facility administrator or designee:

(A) must review any minor consequence issued for longer than 24 hours within 24 hours after issuance of the consequence; and

(B) may overturn or modify any privilege suspension determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal major disciplinary consequences by filing an appeal in accordance with §380.9551 or §380.9555 of this title.

(h) Placement Disposition Options. In accordance with §380.9517 of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.

(i) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, or help someone else commit any of the following:

(1) Assault - Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(2) Assault - Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer that does not result in bodily injury, such as, but not limited to, pushing, poking, and grabbing.

(3) Assault Causing Bodily Injury to Another Youth--intentionally and knowingly or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally and knowingly or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act that amounts to more than mere planning but that fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high or medium restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) Fighting that Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(13) Two or More Failures to Comply with Written, Reasonable Request (for Youth in Medium Restriction Residential Placement)--failing on two or more occasions to comply with a written, reasonable request of staff. If the expectation is daily or weekly, the two failures to comply must be within a 30-day period. If the expectation is monthly, the two failures to comply must be within a 90-day period.

(14) Misuse of Medication--using medication provided to the juvenile by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally participating with two (2) or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) Possession of a Weapon--possessing a weapon or item(s) which has been made or adapted for use as a weapon.

(18) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants (including alcohol and tobacco), medications not prescribed for the juvenile by authorized medical or dental staff, tobacco products, similar intoxicants, or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth must be given water to drink and two hours to provide the sample.)

(20) Refusing a Search--refusing to submit to an authorized search of person or area.

(21) Sexual Misconduct--intentionally and knowingly engaging in any of the following:

(A) 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;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(22) Stealing--intentionally taking property from another without permission and the property has an estimated value of $100 or more.

(23) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(24) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(25) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(26) Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(27) Violation of any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(j) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, or help someone else commit any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property from another without permission and the property has an estimated value of less than $100.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Undesignated Area--being in any area without the appropriate permission to be in that area.

(16) Vandalism--intentionally causing less than $100 in damage to state or personal property.

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 May 31, 2013.

TRD-201302240

Brett Bray
General Counsel
Texas Juvenile Justice Department
Effective date: May 31, 2013
Proposal publication date: March 29, 2013
For further information, please call: (512) 490-7014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §90.3, concerning definitions; and §90.42, concerning standards for facilities serving individuals with an intellectual disability or related conditions, in Chapter 90, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions. The amendment to §90.42 is adopted with changes to the proposed text published in the February 1, 2013, issue of the *Texas Register* (38 TexReg 481). The amendment to §90.3 is adopted without changes to the proposed text.

The amendments are adopted to increase medical professional service options for intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID), as allowed by current federal regulations, which state at 42 Code of Federal Regulations, §483.460(a)(4), that "to the extent permitted by state law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section."

The amendment to §90.3, relating to definitions, clarifies that the term "health care professional" includes a physician, licensed nurse, physician assistant, podiatrist, dentist, physical therapist, speech therapist, and occupational therapist; and "licensed nurse" includes a licensed vocational nurse, registered nurse, or advanced practice nurse. In addition, definitions were added for "advanced practice nurse," "licensed vocational nurse," and "registered nurse."

Section 90.42 allows a licensed health care professional acting within the scope of the professional's practice to provide written and oral orders for medication, participate on an interdisciplinary team reviewing issues related to restraint, implement policies and procedures for automatic stop orders for medications, and order specialized nutritional support. In addition, §90.42 allows a licensed health care professional acting within the professional's scope of practice to delegate to unlicensed staff the provision of specialized nutritional support.

DADS received a written comment from one individual. A summary of the comment and the response follows.

Comment: Regarding §90.42, relating to physician's orders for restraints, the commenter questioned if the rule can be inter-

preted to mean that a physician may be asked to write an order for restraint that occurred the previous day for a patient he or she does not know and for a situation or event about which that doctor has no knowledge.

Response: The agency responds that a physician must certify that the resident of an ICF/IID needs the level of care provided by an ICF/IID, establish a written plan of care for the resident, and serve as a member of the resident's interdisciplinary team. In addition, an ICF/IID is required to ensure the availability of physician services 24 hours a day. Therefore, a physician who is knowledgeable of the resident's conditions, needs, and behaviors should be available to issue an order for restraint, even if the physician was not present when the restraint occurred.

While a physician should be available to issue an order for restraint, the agency has broadened the rule, at §90.42(e)(4)(G), to authorize a health care professional acting within the professional's scope of practice to issue an order. This is consistent with other rules that have been amended to allow health care professionals acting within the scope of their practice to provide services.

SUBCHAPTER A. INTRODUCTION

40 TAC §90.3

The amendment is adopted under Texas Government Code, §531.0005, 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 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; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for individuals with an intellectual disability or related conditions; and 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.

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 May 28, 2013.

TRD-201302171
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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Proposal publication date: February 1, 2013
For further information, please call: (512) 438-4466

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.42

The amendment is adopted under Texas Government Code, §531.0005, 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 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; Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for individuals with an intellectual disability or related conditions; and 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.

§90.42. Standards for Facilities Serving Individuals with an Intellectual Disability or Related Conditions.

(a) Purpose. The purpose of this section is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of individuals based on an active treatment program in facilities governed by this chapter; and

(2) for the establishment, construction, maintenance, and operation of such facilities that view an intellectual disability and related conditions within the context of a developmental model in accordance with the principle of normalization.

(b) Philosophy. A facility regulated by the standards in this section is known as an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID). Individuals in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c) Standards. Each ICF/IID must comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations (CFR), Part 483, Subpart I, §§483.400 - 483.480. Additionally, DADS adopts by reference the federal regulations governing conditions of participation for the ICF/IID program as specified in 42 CFR, Part 483, Subpart I, §§483.410, 483.420, 483.430, 483.440, 483.450, 483.460, 483.470, and 483.480 as licensing standards.

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/prelicensure training conference prior to licensing by DADS. The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with an intellectual disability or related conditions.

(1) A new provider is an entity which has not had at least one year of administering services in a facility serving persons with an intellectual disability or related conditions in Texas. All new providers must attend a precertification training conference prior to the life safety code survey.

(2) Each new provider must designate at least one individual who will be involved with the direct management of the facility to attend the training conference prior to a health survey being scheduled.

(3) Each new provider will be given a training schedule. DADS will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(e) Additional requirements.

(1) A facility must develop and implement policies and procedures for reporting abuse, neglect, and exploitation to the Department of Family and Protective Services and reporting other incidents to DADS.

(2) In the area of cardiopulmonary resuscitation (CPR), the following apply:

(A) At least one staff person per shift and on duty must be trained by a CPR instructor certified by an organization such as the American Heart Association or the Red Cross.

(B) The facility must ensure that staff members maintain their certification as recommended by such organizations.

(3) In the area of behavior management, seclusion of residents may not be used.

(4) In the area of physical restraints, the following apply:

(A) A facility must not use restraint:

(i) in a manner that:

(I) obstructs the resident's airway, including the placement of anything in, on, or over the resident's mouth or nose;

(II) impairs the resident's breathing by putting pressure on the resident's torso;

(III) interferes with the resident's ability to communicate;

(IV) extends muscle groups away from each other;

(V) uses hyperextension of joints; or

(VI) uses pressure points or pain;

(ii) for disciplinary purposes, that is, as retaliation or retribution;

(iii) for the convenience of staff or other residents; or

(iv) as a substitute for effective treatment or habilitation.

(B) A facility may use restraint:

(i) in a behavioral emergency;

(ii) as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by a resident;

(iii) during a medical or dental procedure if necessary to protect the resident or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(iv) to protect the resident from involuntary self-injury; and

(v) to provide postural support to the resident or to assist the resident in obtaining and maintaining normative bodily functioning.

(C) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to a resident, a facility must ensure that the interdisciplinary team:

(i) with the participation of a physician, or a physician assistant or an advanced practice nurse acting within the scope of his or her practice, identifies:

(I) the resident's known physical or medical conditions that might constitute a risk to the resident during the use of restraint;

(II) the resident's ability to communicate; and

(III) other factors that must be taken into account if the use of restraint is considered, including the resident's:

(-a-) cognitive functioning level;

(-b-) height;

(-c-) weight;

(-d-) emotional condition (including whether the resident has a history of having been physically or sexually abused); and

(-e-) age;

(ii) documents the conditions and factors identified in accordance with clause (i) of this subparagraph, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the resident's record; and

(iii) reviews and updates with a physician, physician assistant, or licensed nurse, at least annually or when a condition or factor documented in accordance with clause (ii) of this subparagraph changes significantly, information in the resident's record related to the identified condition, factor, or limitation.

(D) If a facility restrains a resident as provided in subparagraph (B) of this paragraph, the facility must:

(i) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subparagraph (C)(ii) and (iii) of this paragraph;

(ii) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the resident and others;

(iii) safeguard the resident's dignity, privacy, and well-being; and

(iv) not secure the resident to a stationary object while the resident is in a standing position.

(E) If a facility uses restraint in a circumstance described in subparagraph (B)(i) or (ii) of this paragraph:

(i) the facility may use only a personal hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subparagraph (A)(i) of this paragraph; and

(ii) if a resident rolls into a prone or supine position during restraint, the facility must transition the resident to a side, sitting, or standing position as soon as possible. The facility may only use a prone or supine hold:

(I) as a transitional hold, and only for the shortest period of time necessary to ensure the protection of the resident or others;

(II) as a last resort, when other less restrictive interventions have proven to be ineffective; and

(III) except in a small facility, when an observer who is trained to identify risks associated with positional, compression,

or restraint asphyxiation, and with prone and supine holds is ensuring that the resident's breathing is not impaired.

(F) A facility must release a resident from restraint:

(i) as soon as the resident no longer poses a risk of imminent physical harm to the resident or others; or

(ii) if the resident in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency.

(G) If a facility restrains a resident as provided in subparagraph (B)(i) of this paragraph, the facility must obtain a written order authorizing the restraint from a health care professional acting within his or her scope of practice by the end of the first business day after the use of restraint.

(H) A facility must ensure that each resident and the resident's legally authorized representative are notified of the DADS rules and the facility's policies related to restraint and seclusion.

(I) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(5) In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Texas Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered orally or in writing by a health care professional acting within the scope of his or her practice. Oral orders may be taken only by a licensed nurse, a pharmacist, physician assistant, or physician, and must be immediately transcribed and signed by the individual taking the order. Oral orders must be signed by the health care professional who ordered the medication within seven working days after issuing the order.

(C) The facility, with input from the consultant pharmacist and a health care professional acting within the scope of his or her practice, must develop and implement procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(6) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes) must be given:

(A) by a health care professional acting within the scope of his or her practice or by a person to whom a health care professional has properly delegated performance of the task; and

(B) in accordance with an order issued by a health care professional acting within the scope of his or her practice.

(7) In the area of self-administration of medication and emergency medication kits, the following apply.

(A) Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(B) Residents may participate in a self-administration of medication training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication training program may be conducted by personnel described in §90.43(a)(1), (3), and (4) of this subchapter (relating to Administration of Medication).

(C) A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §90.324 and §90.325 of this chapter (relating to Emergency Medication Kit and Controlled Substances).

(8) In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Texas Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131 - 97.146 (relating to Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control and Prevention (CDC).

(9) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A) - (F) of this paragraph apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by:

(A) a person licensed to practice medicine in accordance with Texas Occupations Code, Chapter 155 (relating to License to Practice Medicine);

(B) a person licensed as a physician assistant in accordance with Texas Occupations Code, Chapter 204 (relating to Physician Assistants); or

(C) a person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301 (relating to Nurses), and authorized by the Texas Board of Nursing to practice as an advanced practice nurse.

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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For further information, please call: (512) 438-4466

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PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 106. DIVISION FOR BLIND SERVICES

SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM

DIVISION 7. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER

40 TAC §§106.801, 106.803, 106.805, 106.807, 106.809

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts new Subchapter B, Vocational Rehabilitation Program, Division 7, Certificate of Blindness for Tuition Waiver, §106.801, Purpose; §106.803, Legal Authority; §106.805, Definitions; §106.807, Eligibility; and §106.809, Certificate of Blindness for Tuition Waiver. The rules are adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1956) and will not be republished.

The Education Code, Chapter 54, §54.364, provides residents of Texas who are deaf or blind (and who meet certain other criteria) an exemption from the payment of tuition fees at institutions for higher learning that utilize public funds. Section 54.364 authorizes DARS and the Texas Higher Education Coordinating Board to develop rules and procedures for the efficient implementation of the tuition waiver. DARS' new adopted rules serve to reflect current practice within DARS Division for Blind Services and to provide information for DARS consumers, agency staff and members of the public.

DARS received no public comment with regard to the new rules.

The new rules are authorized by: Texas Government Code §§2001.001 et seq., Texas Human Resources Code, Chapters 91 and 117, and Texas Education Code, Chapter 54, §54.364. The new rules are adopted in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201302141
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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Proposal publication date: March 22, 2013
For further information, please call: (512) 424-4050

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SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts the repeal of and new rules under Subchapter I, Blind Children's Vocational Discovery and Development Program (BCVDD Program). Specifically, DARS adopts the repeal of §§106.1401, 106.1403, 106.1407, 106.1409, 106.1411, 106.1413, 106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461, 106.1463, 106.1475, 106.1485, 106.1487, 106.1489, 106.1501, 106.1503, 106.1505, 106.1507, 106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, and 106.1551. DARS also adopts, as replacement of the repealed rules and/or the subject matter of the rules, new Division 1, General Rules, §§106.1401, 106.1403, 106.1405, 106.1407, 106.1409, 106.1411, 106.1413, and 106.1415; Division 2, Eligibility and Assessment, §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, and 106.1433; Division 3, Services, §§106.1441, 106.1443, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1459, 106.1461, and 106.1463; Division 4, Economic Resources and Consumer Participation, §106.1471; Division 5, Methods of Administration of BCVDD Program, §106.1481 and §106.1483; and Division 6, Complaint Resolution Process, §106.1491. The repeal and new rules are adopted without changes to the proposed text as published in the March 22, 2013, issue of the *Texas Register* (38 TexReg 1957) and will not be republished.

The repeals and new rules are adopted as the result of the review that DARS conducted in accordance with Texas Government Code §2001.039, which requires rule review every four years. The adopted rule review of Chapter 106 was published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5641). As a result of the four-year rule review, DARS determined that the reasons for originally adopting the rules continue to exist. However, DARS determined that Chapter 106, Subchapter I needed language revisions and reorganization. New rules concerning case management services reflect existing program practice. No substantive changes will occur in the program as a result of the rule changes.

DARS received no comments regarding the repeal and new rules.

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.1401, 106.1403, 106.1407, 106.1409, 106.1411, 106.1413

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-4050

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 424-4050

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DIVISION 3. SERVICES

40 TAC §§106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461, 106.1463

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
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DIVISION 4. ECONOMIC RESOURCES

40 TAC §106.1475

The repeal is adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 5. ORDER OF SELECTION FOR PAYMENT OF SERVICES

40 TAC §§106.1485, 106.1487, 106.1489

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 6. CASE MANAGEMENT REIMBURSEMENT CHARGES

40 TAC §§106.1501, 106.1503, 106.1505, 106.1507

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 7. COMPLAINT RESOLUTION PROCESS

40 TAC §§106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, 106.1551

The repeals are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 1. GENERAL RULES

40 TAC §§106.1401, 106.1403, 106.1405, 106.1407, 106.1409, 106.1411, 106.1413, 106.1415

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 2. ELIGIBILITY AND ASSESSMENT

40 TAC §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1431, 106.1433

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the author-

ity to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 3. SERVICES

40 TAC §§106.1441, 106.1443, 106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1459, 106.1461, 106.1463

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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DIVISION 4. ECONOMIC RESOURCES AND CONSUMER PARTICIPATION

40 TAC §106.1471

The new rule is adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 5. METHODS OF ADMINISTRATION OF BCVDD PROGRAM

40 TAC §106.1481, §106.1483

The new rules are adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. COMPLAINT RESOLUTION PROCESS

40 TAC §106.1491

The new rule is adopted under the authority of Texas Human Resources Code, Chapters 91 and 117, and in accordance with Texas Health and Human Services Commission's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services agencies.

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §2.12, Project Coordination, and §2.103, Public Participation for an Environmental Impact Statement or Supplemental Environmental Impact Statement. The amendments to §2.12 and §2.103 are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 793) and will not be republished. The effective date of these amendments is September 1, 2013.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, the department is repealing existing Subchapter B and adopting new Subchapters G, H, and I, relating to Memorandum of Understanding with the Texas Parks and Wildlife Department, Memorandum of Understanding with the Texas Historical Commission, and Memorandum of Understanding with the Texas Commission on Environmental Quality, respectively.

The amendments change the current references to 43 TAC Chapter 2, Subchapter B in the department's rules so that the sections will reference the appropriate new provisions that are replacing Subchapter B. The amendments to §2.12(b) change the reference in that section from Subchapter B to new Subchapters G, H, and I. The amendments to §2.103(d)(2)(B) and (g)(2) change the references in those subsections from Subchapter B to new Subchapters G, H, and I.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §2.12

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

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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Jeff Graham
General Counsel
Texas Department of Transportation
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SUBCHAPTER E. PUBLIC PARTICIPATION

43 TAC §2.103

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

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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Jeff Graham
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts the repeal of §2.21, Purpose, and §2.22, Memorandum of Understanding with the Texas Parks and Wildlife Department. The department simultaneously replaces the repealed sections with new Subchapter G, §§2.201 - 2.214, Memorandum of Understanding with the Texas Parks and Wildlife Department. The repeal of §2.21 and §2.22 and new §§2.203 - 2.205, 2.207, and 2.209 - 2.214 are adopted without changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 794) and will not be republished. New §§2.201, 2.202, 2.206, and 2.208 are adopted with changes to the proposed text as published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 794). The effective date for both the repeals and new sections is September 1, 2013.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, the department has evaluated its MOU with the Texas Parks and Wildlife Department (TPWD) adopted in 1999, and finds it necessary to repeal existing §2.21 and §2.22 and simultaneously adopt new Subchapter G, §§2.201 - 2.214.

The adopted new MOU between TPWD and the department satisfies the statutory requirements for reviewing and revising MOUs with resource agencies. It is intended to replace the existing MOU, which has been in effect since March 21, 1999, with an MOU that more effectively streamlines TPWD's review of the department's projects and simultaneously better allows TPWD to focus on those projects most likely to affect natural resources. The adopted MOU has several new provisions and procedures that were developed based on experience gained from numerous projects that the department has submitted and TPWD has reviewed since the 1999 MOU was executed. It is also better organized than the existing MOU, with different subject areas broken into separate sections. Additionally, the adopted MOU reflects changes made by the department's recent revision of its environmental review rules, published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1727).

SECTION BY SECTION EXPLANATION OF ADOPTED MOU

Section 2.201 sets out the purpose of the MOU and explains that it supersedes various other MOUs previously entered into by the department and TPWD. Section 2.201 also requires the MOU to be updated within five years of its effective date, as required by Transportation Code, §201.607.

Section 2.202 sets forth the applicability of the MOU by identifying the types of transportation projects that must be evaluated under the MOU. Maintenance projects for which a programmatic environmental review is conducted under 43 TAC §2.133 are not required to be evaluated under the MOU.

Section 2.203 contains definitions of various terms used in the MOU.

Section 2.204 sets parameters on the department's use of the Texas Natural Diversity Database (TXNDD) maintained by TPWD, a database of information about listed and proposed threatened and endangered species and other features of Texas natural history. The section also requires the department to report observations of certain species to TPWD using TXNDD reporting forms.

Section 2.205 sets forth procedures for determining whether the department is required to coordinate a given transportation project with TPWD. It requires the department to perform a Tier I site assessment on each project to which the MOU applies as set forth in §2.202. The department then compares the results of the Tier I site assessment to triggers listed in §2.206, and thresholds identified in a programmatic agreement developed under §2.213, to determine whether coordination is required.

Section 2.206 contains triggers for determining when coordination is required using the procedures identified in §2.205. For example, coordination is required if a project will directly impact known isolated wetlands outside the existing department right-of-way. Use of these triggers, and the thresholds identified in a programmatic agreement developed under §2.213, will allow TPWD to focus its resources on reviewing those projects most likely to adversely affect natural resources. Note that a clarifying revision has been made to the proposed version of §2.206(6). The words "at least" have been inserted to more clearly indicate that projects impacting more than 0.10 acre of riparian vegetation are subject to coordination.

Section 2.207 explains the process for early coordination of a project between TPWD and the department. It is the intention of the department and TPWD that early coordination, as opposed to administrated coordination under §2.208, will be the primary mechanism for coordination of projects between the agencies. In conducting early coordination, the department provides project documentation to TPWD, and TPWD provides determinations and recommendations to the department. The results of early coordination are then summarized in the project's environmental review document. The process for early coordination is less formal than the process for administrated coordination, explained in the following section.

Section 2.208 explains the process for administrated coordination, which must be conducted for projects subject to coordination under §2.205, but for which early coordination under §2.207 is not conducted. Administrated coordination requires the department to submit to TPWD a coordination package consisting of a cover letter, a Tier II site assessment, and other studies or reports the department believes are relevant. TPWD then has 45 days to comment on any aspect of the project it determines may have adverse impacts to fish and wildlife resources. Within 90 days of making a decision related to a written comment made by TPWD, the department must provide TPWD with a written explanation of the department's decision or other action. Also, as with early coordination, the results of administrated coordination must be summarized in the project's environmental review document.

Section 2.209 explains Tier II site assessments, which are the primary environmental reports prepared by the department and reviewed by TPWD during administrated coordination, and provides the minimum required elements of a Tier II site assessment.

Section 2.210 requires the department to communicate with TPWD when unforeseen impacts are identified during construction of a project.

Section 2.211 requires the department to maintain records of projects that are subject to the MOU and to respond within 30 days to any request made by TPWD to review project records.

Section 2.212 allows TPWD to make site visits to department project sites.

Section 2.213 requires the department and TPWD to develop certain programmatic agreements addressing issues not covered in the MOU. The section describes six specific programmatic agreements that must be developed by the department and TPWD.

Section 2.214 requires the department and TPWD to appoint an interagency MOU implementation team to fulfill various functions related to implementing the MOU, such as developing the programmatic agreements required by §2.213, preparing recommendations for the next update of the MOU, and developing metrics for tracking the effectiveness of the MOU.

Since publication of the proposed rulemaking, the department and TPWD have agreed on an effective date for the MOU of September 1, 2013. The department has added §2.201(e) to indicate that effective date and to address the transition from the pre-existing MOU to the new one. Projects for which coordination with TPWD has been initiated prior to September 1, 2013 will complete coordination under the procedures of the pre-existing MOU. Projects for which coordination with TPWD has not been initiated prior to September 1, 2013 will be governed by this MOU.

COMMENTS

Comments were received from Valerie Covey, Williamson County Commissioner for Precinct 3, and Josephine Jarrell.

Comment: Commissioner Covey expressed concerns about a lack of clarity and assurance with regard to the use of programmatic agreements.

Response: The department believes that programmatic agreements are the most effective mechanism for agreeing on certain parameters and protocols concerning TPWD's review of department projects, such as the specific best management practices to be employed by the department in consideration of potential impacts on certain species. While the framework for TPWD's review process is set out in the MOU, programmatic agreements will allow the department and TPWD to memorialize mutual understandings on particular topics in greater detail than would be appropriate in the MOU itself, without having to re-assert those understandings on a project-specific basis. They may also provide the department and TPWD with the flexibility to make adjustments to certain mutual understandings as opportunities for increased efficiency and effectiveness become apparent.

Comment: Regarding the coordination trigger in §2.206 concerning species of greatest conservation need (SGCN), Commissioner Covey commented that SGCN are not regulated, and there is not sufficient information about status and habitat to develop best management practices (BMPs) to avoid coordination with TPWD. Commissioner Covey further commented that the trigger would require TPWD to review more projects and should be deleted.

Response: TPWD may comment on a project's potential impacts to non-regulated species in addition to impacts on regulated species. The department believes that there is sufficient information about many SGCNs to develop BMPs, which it expects to significantly reduce the number of projects that would otherwise be referred to TPWD under this trigger. The department is committed to reducing the overall number of projects that are referred to TPWD for comment, while focusing on those projects of greatest interest to TPWD. TPWD representatives have expressed to the department that TPWD is also committed to achieving that goal. Given that the trigger provides for use of BMPs to substitute for referral, the department believes that the trigger is appropriate. However, Commissioner Covey's comment brought to light the need for certainty with respect to which county list of Rare and Protected Species should be used to identify SGCNs that could trigger coordination on a given project. The department, with TPWD's approval, has amended §2.206(1) to indicate that the list as it exists on the day the agreed-upon project scope is finalized, or if there is no project scope and for reevaluations, as it exists when TxDOT makes its determination regarding whether coordination is required, is the one that should be used to determine coordination for that project.

Comment: Commissioner Covey commented that TPWD's review period for administrated project coordination should be 30 days, rather than 45 days. Commissioner Covey further commented that, under proposed §2.208, TPWD's review period could be extended to 50 days because the 45-day review period would not begin until five days after transmittal.

Response: TPWD has indicated that it cannot agree to a review period for administrated project coordination of less than 45 days. In response to Commissioner Covey's comment about the deadline being extended to 50 days, the department has, with TPWD's approval, revised §2.208(f) to require TPWD to notify the department by email when it receives the coordination package for review. The 45-day review period begins on the day that email is sent, or five business days after the date of transmittal of the coordination package, whichever occurs first.

Comment: Commissioner Covey commented that the proposed MOU did not adequately address local government project sponsors' ability to coordinate directly with TPWD.

Response: With TPWD's approval, the department has added new §2.202(c). It provides that, for those projects for which TxDOT allows a local government to be the project sponsor under §2.47 of the department's rules, the local government sponsor may use the procedures specified in this MOU to coordinate directly with TPWD, subject to TPWD approval on a case-by-case basis.

Comment: Josephine Jarrell commented that there are discrepancies in the definitions of "state transportation project" and "transportation project," and that both of those definitions differ from the definition of "transportation projects" in the pre-existing MOU that is being repealed.

Response: For consistency, the department and TPWD are using the definitions of "state transportation project" and "transportation project" adopted by the department in February 2012 and codified at 43 TAC §2.5, Definitions. The terms have different definitions because they are intended to have different meanings. A "state transportation project" is a type of "transportation project" that is not a major federal action for the purpose of the National Environmental Policy Act.

Comment: Josephine Jarrell commented that "transportation facilities" as used in the definition of "construction" is not defined.

Response: The comment appears to refer to the pre-existing MOU that is being repealed, as the term "construction" is not defined in the adopted MOU.

Comment: Josephine Jarrell commented that aviation, public transit, and rail projects may have different requirements than FHWA, as they are funded by other Department of Transportation agencies, and asked whether the department's Aviation, Public Transit, and Rail Division staff were part of the negotiations with TPWD.

Response: As indicated by §2.202(1) - (4) and the definitions of "state transportation project" and "FHWA transportation project" in §2.203, the MOU does not expressly apply to projects funded by department of transportation agencies other than FHWA. This is consistent with the applicability of the department's general environmental review rules. *See* 43 TAC §2.3, Applicability; Exceptions. However, the department has the option of coordinating aviation, public transit, and rail projects under the MOU, as provided in §2.202(5). The department's Environmental Affairs Division staff conducted the negotiations with TPWD on behalf of all department districts and divisions.

Comment: Josephine Jarrell commented that list of degrees in the definition of "qualified biologist" should be expanded to include a Bachelor of Arts or Bachelor of Science degree in Environment Science.

Response: The department declines to make the requested change. A degree in Environment Science may or may not include a sufficient biology component to qualify an individual as a qualified biologist. However, note that, under the definition, individuals with a degree in a field closely related to the listed fields of study may qualify as a qualified biologist based on the nature of their specific course of study.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The department determined that this rulemaking relates to actions subject to the Texas Coastal Management Program (CMP) under the Coastal Coordination Act of 1991, as amended (Natural Resources Code, §§33.201 et seq.), and must be consistent with all applicable CMP policies, because it concerns the department's environmental review of transportation projects. The department reviewed this action for consistency with the CMP goals and policies under the rules promulgated by the Coastal Coordination Council, which remain in effect until superseded by rules of the General Land Office. The department has determined that the action is consistent with applicable CMP goals and policies.

A CMP policy applicable to this rulemaking is that transportation projects shall comply with certain practices concerning the siting of a project to lessen the impacts on coastal natural resources *(see* 31 TAC §501.31). The rules concern the method by which to evaluate the environmental impacts of a transportation project and do not dictate the siting of a project. However, the purpose of the rules is to establish procedures for identifying the impacts of transportation projects on certain resources and for coordination of projects with the relevant state resource agency. This provides an additional mechanism for avoiding, minimizing, or mitigating, where practicable, adverse effects of department projects on coastal natural resource areas that serve as habitat, on coastal preserves, and on threatened and endangered species. For these reasons, the rulemaking action is consistent with the CMP goal of protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural areas.

A copy of the proposed rulemaking was submitted to the General Land Office for its comments on the consistency of the rulemaking with the CMP. The department also requested that the public give comment on whether the rulemaking is consistent with the CMP. The General Land Office did not comment on the rulemaking, and no public comment concerned this matter.

SUBCHAPTER B. MEMORANDA OF UNDERSTANDING WITH NATURAL RESOURCE AGENCIES

43 TAC §2.21, §2.22

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

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. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS PARKS AND WILDLIFE DEPARTMENT

43 TAC §§2.201 - 2.214

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607(b), which requires the department to adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or for the preservation of historical or archeological resources, and to adopt all revisions to these memoranda by rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.607.

§2.201. Purpose.

(a) Transportation Code, §201.607, requires the Texas Department of Transportation (TxDOT) to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources, and requires TxDOT and each of the agencies to adopt the memoranda and all revisions by rule. This subchapter contains the memorandum of understanding between TxDOT and the Texas Parks and Wildlife Department (TPWD) that implements that section.

(b) This subchapter furthers the environmental policy of TxDOT to protect, preserve, and when possible, enhance the environment, and the responsibility of TPWD for protecting the state's fish and wildlife resource.

(c) This MOU supersedes the MOU that was adopted to be effective March 21, 1999; the Memoranda of Agreement for the Finalization of 1998 MOU Concerning Habitat Descriptions and Mitigation that was signed August 2, 2001; the MOU Regarding Mitigation Banking that was signed December 7, 2005; and the Memorandum of Agreement for Sharing and Maintaining Natural Diversity Database Information that was signed April 11, 2007. Nothing in this subchapter

supersedes, modifies, or nullifies any other agreement entered into by TxDOT and TPWD.

(d) TxDOT and TPWD shall review and by rule shall update this MOU not later than the fifth anniversary of its effective date, as required by Transportation Code, §201.607.

(e) The effective date of this MOU is September 1, 2013. Projects for which coordination with TPWD has been initiated prior to September 1, 2013 will complete coordination under the procedures of the pre-existing MOU. Projects for which coordination with TPWD has not been initiated prior to September 1, 2013 will be governed by this MOU.

§2.202. Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter applies to:

(1) a state transportation project or Federal Highway Administration (FHWA) transportation project conducted by the Texas Department of Transportation (TxDOT);

(2) a state transportation project or FHWA transportation project of a private or public entity that is funded in whole or in part by TxDOT;

(3) a state transportation project or FHWA transportation project of a private or public entity that requires Texas Transportation Commission or TxDOT approval;

(4) a maintenance program for which a programmatic environmental review is conducted under §2.133 of this chapter (relating to Maintenance Projects and Programs); or

(5) any other type of project coordinated at TxDOT's request.

(b) This subchapter does not apply to individual maintenance projects for which a programmatic environmental review is conducted under §2.133 of this chapter.

(c) For transportation projects for which TxDOT allows a local government to be the project sponsor under §2.47 of this chapter (relating to Approval of Local Government as Project Sponsor), the local government project sponsor may use the procedures specified in this MOU to coordinate directly with TPWD, subject to TPWD approval on a case-by-case basis.

§2.206. Coordination Triggers.

The triggers described in this section shall be used to determine whether coordination is required as provided by §2.205 of this subchapter (relating to Determining Need for TPWD Coordination).

(1) The project is within the range of a state threatened or endangered species or SGCN as identified by the TPWD County list of Rare and Protected Species as it exists on the day the agreed-upon project scope is finalized under §2.44 of this chapter (relating to Project Scope) or if there is no project scope and for reevaluations, as it exists when TxDOT makes its determination regarding whether coordination is required, and there is suitable habitat, unless BMPs as defined in this MOU are implemented as provided by a programmatic agreement developed under §2.213 of this subchapter (relating to Programmatic Agreements).

(2) The project may adversely impact important remnant vegetation based on the judgment of a qualified biologist or as mapped in the TXNDD.

(3) The project requires a nationwide permit with pre-construction notification or an individual permit, issued by the United States Army Corps of Engineers.

(4) The project includes in the TxDOT right of way or conservation, construction, or drainage easement more than 200 linear feet of stream channel for each single and complete crossing of one or more of the following that is not already channelized or otherwise maintained:

(A) channel realignment; or

(B) stream bed or stream bank excavation, scraping, clearing, or other permanent disturbance.

(5) The project contains known isolated wetlands outside existing TxDOT right of way that will be directly impacted by the project.

(6) The project may impact at least 0.10 acre of riparian vegetation based on the judgment of a qualified biologist or as mapped in the EMST.

(7) The project disturbs habitat in an area equal to or greater than the area of disturbance indicated in the Threshold Table Programmatic Agreement developed under §2.213 of this subchapter.

§2.208. Administrated Project Coordination.

(a) Administrated project coordination will be conducted for projects subject to coordination under this MOU, but for which early project coordination is not completed.

(b) Administrated project coordination will occur between TxDOT's Environmental Affairs Division and the TPWD Wildlife Habitat Assessment Program, unless those two units agree in writing to allow other appropriate organizational units of the respective agencies or other entities approved by the respective agencies to conduct the coordination. TxDOT's Environmental Affairs Division and the TPWD Wildlife Habitat Assessment Program are each responsible for identifying its respective agency's rules and requirements.

(c) To initiate administrated project coordination, TxDOT will submit the coordination package to TPWD for review and comment. The coordination package consists of a cover letter that requests review pursuant to this MOU, the Tier II site assessment, and any other environmental studies or reports that TxDOT believes are relevant to TPWD's review of the project. This coordination package is prepared and submitted to TPWD prior to the environmental document being produced.

(d) Texas ECOS is a web-based relational database for electronic communication and tracking of environmental coordination. TPWD will be provided access with user privileges to Texas ECOS with the intention of making information exchange paperless and real time. Until TPWD has provided written agreement that Texas ECOS is adequate for TPWD coordination review, all administrated coordination will be conducted in writing and transmitted on agency letterhead.

(e) TPWD will comment on any aspect of the project it determines may have adverse impacts to fish and wildlife resources.

(f) For written communications, TPWD will notify TxDOT by email to indicate when it has received the coordination package for its review. TPWD shall have 45 days from the date TPWD receives the coordination package for its review, or from five business days after the date of transmittal of the coordination package, whichever occurs first, to provide its comments on the project. Once Texas ECOS is accepted as the means for communicating and tracking project coordination, the 45-day clock will start on the first business day after notification to TPWD that the coordination information is available in ECOS.

(g) TPWD may request additional information during the 45-day review period, in which case TxDOT will provide the requested

information if the information is available or can be reasonably obtained. If the requested information cannot be provided, then TxDOT will inform TPWD and explain why in writing.

(h) TxDOT will consider and implement when mutually agreeable, the comments that are submitted by TPWD within the 45-day review period. TxDOT will provide TPWD with a written explanation of TxDOT's decisions or other action within 90 days of making a decision related to the comment.

(i) If TPWD submits comments after the end of the 45-day review period, TxDOT will consider the comments in making decisions on the project to the extent practicable, and provide a written response in the same manner indicated in subsection (e) of this section.

(j) The TxDOT department delegate for the project will ensure that the results of any coordination with TPWD, including efforts made by TxDOT during project planning and design to avoid and minimize impacts to natural resources, shall be summarized in the project's environmental review document.

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 May 31, 2013.

TRD-201302217
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: September 1, 2013
Proposal publication date: February 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 5. FINANCE
SUBCHAPTER H. TRANSPORTATION DEVELOPMENT CREDIT PROGRAM

43 TAC §5.107, §5.109

The Texas Department of Transportation (department) adopts amendments to §5.107 and §5.109, concerning the transportation development credit program. The amendments to §5.107 and §5.109 are adopted without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1865) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The Texas Transportation Commission (commission) adopted Title 43, Texas Administrative Code, Chapter 5, Subchapter H, in September 2012 to establish a more efficient process for allocating, awarding, and administering transportation development credits. Since that time, the department has determined that minor amendments are required to clarify the rules and provide more flexibility with regard to the award of credits under certain circumstances.

Amendments to §5.107, Award by Commission, clarify the process by which the commission will allocate transportation development credits to support public transit projects. For each fiscal year the minimum number of credits available shall be equal to the lesser of 15 million credits or fifty percent of the total number of credits available for award by the commission on the 1st day of that fiscal year. This revision will eliminate the potential for confusion regarding the allocation process by specifying the minimum balance that will be available each year.

Amendments to §5.109, Discretionary Award, authorize the commission to allocate a lump sum of transportation development credits to the department for use on a program or category of projects which support a department goal or initiative. The individual projects, and the exact amount of credits to be used for each project, need not be specified at the time of allocation. The department will award the credits on behalf of the commission using the same criteria that the commission would consider in making an award. This revision will enable the department to utilize credits in a manner that maximizes federal funds on eligible projects.

COMMENTS

Although no comments on the proposed amendments were received, the Public Transportation Advisory Committee (PTAC) discussed the amendments at its meeting on March 19, 2013.

The statutory duties of PTAC include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating public transportation funds and providing feedback on rule changes involving public transportation matters.

At its meeting, PTAC by motion endorsed the proposed amendments and recommended that the department develop a mechanism to show the use of transportation development credits in program awards in a manner that is accountable, transparent, and easily searched.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

23 U.S.C. §120.

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 May 31, 2013.

TRD-201302218
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: June 20, 2013
Proposal publication date: March 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT
SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.40

The Texas Department of Transportation (department) adopts new §9.40, concerning procurement of architectural, engineer-

ing, or surveying services under a pilot program. New §9.40 is adopted without changes to the proposed text as published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1867) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and implemented through Chapter 9, Subchapter C, Contracting for Architectural, Engineering, and Surveying Services. New §9.40 allows the executive director or the executive director's designee to authorize the execution of an engineering, architecture, or surveying contract that does not comply with Subchapter C, as long as the authorization is in writing and the procurement resulting in the contract provides a fair opportunity for qualification-based competition, was conducted as part of a Texas Transportation Commission (commission) approved pilot project, and the contract does not violate any statute or include federal funding.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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.

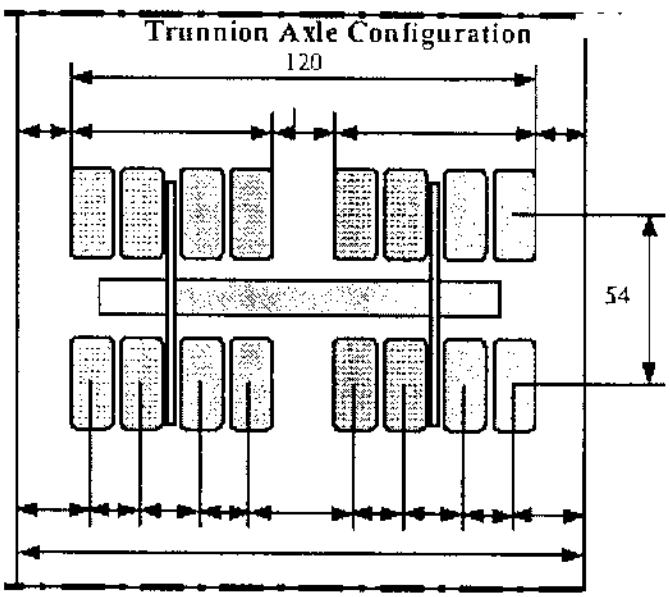
Filed with the Office of the Secretary of State on May 31, 2013.

TRD-201302219
Jeff Graham
General Counsel
Texas Department of Transportation
Effective date: June 20, 2013
Proposal publication date: March 15, 2013
For further information, please call: (512) 463-8683

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: 43 TAC §28.65(b)(6)(C)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Applications: 2013 Parallel Pathways to Success

I. Statement of Purpose. The Texas Department of Agriculture (TDA) is requesting applications for the Parallel Pathways to Success Grant Program. The program requires grant recipients to provide matching funds equal to or greater than the TDA grant award (1:1 match ratio). The purpose of this grant is to align educational resources with workforce needs by supporting the development of programs that offer rural high school students a more flexible education system with a focus on job training. Students will have the opportunity to concurrently earn a high school diploma and vocational skills certifications or college credit towards an Associate's or Bachelor's degree.

II. Eligibility. Grant applications/proposals/ will be accepted from an accredited high school, institution of higher learning, chamber of commerce, economic development commission or similar organization located in the state of Texas. Partnerships are encouraged; however, a single entity must be designated as the official applicant.

Applicants must demonstrate a benefit to students in rural areas in Texas. TDA defines "rural areas" as municipalities with a population of less than 50,000, and counties that have a non-metropolitan population of less than 200,000.

III. Funding Parameters. It is anticipated that selected applications will be funded in a range of $75,000 to $125,000. Grantees will be required to provide a non-federal or state funding match of not less than $1 for each $1 of state funds received through this grant. Budgets, including level of match will be reviewed in the competitive evaluation process. Grantees must have the financial capability to pay all costs up-front.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly.

IV. Term of Funding or Duration of Projects. A Notice of grant award is anticipated to be made by August 2013. All approved projects have an anticipated start date of August 31, 2013 and must be completed by May 31, 2015.

V. Application Requirements. To be considered, applications must be complete and include all of the requested information. Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

VI. Deadline for Submission of Responses. The complete application packet including the proposal with signatures must be **received** by **Thursday, July 11, 2013.** It is the applicant's responsibility to submit all materials necessary for evaluation early enough to ensure timely delivery. Hand-delivered, mailed, faxed or emailed applications must be **RECEIVED** by TDA by close of business (5:30 p.m.) on **Thursday, July 11, 2013.** *Late or incomplete proposals will not be accepted.*

TDA will send an acknowledgement receipt by email indicating the application was received.

VII. Contact Information. For questions regarding submission of the proposal and/or TDA requirements, please contact Mindy Fryer, grants specialist, at (512) 463-6908, or by email at Grants@TexasAgriculture.gov.

TRD-201302261
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 4, 2013

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Structural Pest Control Service Penalty Guidelines and Penalty Matrix

The Texas Department of Agriculture (the department) publishes these revisions to the agency's Structural Pest Control Service penalty matrix to provide greater regulatory transparency, to enhance the department's efforts to protect Texas consumers, and to ensure a level playing field for regulated businesses. Prior to finalization, the department sought and received input from the Structural Pest Control Advisory Committee and the Texas Pest Control Association. Valuable suggestions from both have been incorporated into these guidelines. Penalties under these new guidelines have generally been increased, particularly for businesses operating without required licenses or insurance, to deter conduct detrimental to public health and safety, the environment, and consumer confidence, and to prevent unfair competition by non-compliant businesses. Additionally, these guidelines establish a more focused and defined set of penalty ranges to ensure greater consistency in penalty assessment while still maintaining the flexibility necessary for individual and unique circumstances.

The Texas Legislature, under Chapter 1951 of the Texas Occupations Code (Code), has given the department the authority and responsibility to regulate certain structural pest control activities in this state. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, to inspire consumer confidence, and to protect human health and safety, the environment, and the real and personal property of consumers. To achieve these goals, the department enforces a variety of structural pest control laws and regulations through routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving pest control in and around structures such as homes, apartments, schools, and workplaces.

Department enforcement in the vast majority of cases occurs through administration actions and with the assessment of monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 1951 can be as high as $2,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 1951 and associated rules is found in §12.020 of

the Texas Agriculture Code. Such penalties can range up to a statutorily-imposed maximum of $5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Given the wide variety of possible structural pest control activities, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Structural Pest Control Enforcement Guidelines, including the Structural Pest Control Penalty and Sanction Matrix (matrix), to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 1951 of the Code and rules adopted under that chapter, as published in Chapter 7 of Title 4 of the Texas Administrative Code (TAC). As part of its ongoing commitment to consumer protection and regulatory transparency, the Texas Department of Agriculture has increased many penalties, especially for those that pose a high risk for harm to human health or the environment, and sought to clarify in general how and when penalties will be assessed. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsections when appropriate. Although the department has determined that in general penalties should fall within the ranges listed herein, thus establishing a prescribed penalty range for each violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, additional continuing education, limitations on the scope of a licensee's practice, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture.

The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action, including information about actions to mitigate the consequences of any violation that may serve as a basis for reduction or rescission of an assessed penalty, before further legal action is taken to enforce the assessed penalty.

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 1951 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 1951 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 1951 provision or applicable rule.

2. The prescribed penalty ranges, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 1951 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the penalty range, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, neither intentional nor knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct may be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single previous violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

7. In determining whether a particular respondent has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation to determine whether an order was issued during this period that either (1) found the respondent committed the same or a similar violation or (2) approved a non-contest plea regarding the same or a similar violation. If such an order is found, then a prior violation exists.

8. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any such penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing or negotiate a settlement with the department's enforcement staff that addresses the respondent's objections.

9. Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an approved settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty, waiver of penalty, or reduction of a penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication. Adjustments in the favor of the subjects of penalties or sanctions may be applied prior to or without modification of these guidelines.

This matrix is effective **July 1, 2013,** and supersedes the Administrative Penalty Matrix previously employed by the Structural Pest Control Board, and subsequently implemented by the department upon transition of board duties to this agency, for those violations committed on or after the effective date of this matrix.

Structural Pest Control Service Penalty and Sanctions Matrix

Tables S1, S2 and S3 represent the Hazard or Potential Hazard (HPH) associated with the noncompliance issues listed throughout the body of the matrix. Within the tables, the Minor, Moderate, or Major designations take into consideration the Nature, Circumstances, Extent, and Gravity (NCEG) of the situation, which resulted in the noncompliant finding.

Note: This matrix does not apply to public school districts or non-licensed individuals who are regulated solely under the school IPM law (such as IPM Coordinators).

See policy for handling refusal of inspection.

Table S1 – Low Hazard Potential

	Minor	Moderate	Major
1st Violation	Warning	$150	$300
2nd Violation	$150	$300	$450
3rd & subsequent violations	$300	$450	$600

Table S2 – Moderate Hazard Potential

	Minor	Moderate	Major
1st Violation	$300	$750	$1500
2nd Violation	$500	$1000	$2000
3rd & subsequent violations	$750 Revocation/Suspension	$1500 Revocation/Suspension	$3000 Revocation/Suspension

Table S3 – High Hazard Potential

	Minor	Moderate	Major
1st Violation	$500	$1000	$2000
2nd Violation	$1000	$2000	$4000
3rd & subsequent violations	$1500 Revocation/Suspension	$3000 Revocation/Suspension	$5000 Revocation/Suspension

Failure to notify employment or termination of certified applicator/technician/apprentice	§7.142	S1
Use of non-approved notice/sign	§7.146	S1
Use of non-approved CIS	§7.147	S1
Failure to notify change of address: Business/noncommercial CA (§7.126(e))	§7.161(17)	S1
Advertising violations (§7.152)	§7.161(3)	S2
Failure to surrender license as Department ordered	§7.162	S3
Failure to comply with Department order	§7.163/§7.161(26)	S3
Failure to provide SPCS/D-2 form	§7.174(b)(8)	S3
Refusal to release training records on employment change	§7.133	S1
No company name, location address or mailing address, business license number (TPCL) or telephone number on invoice	§7.145	S1
No numbers or magnetic numbers on vehicle (§7.141)	§7.161(15)	S1
No jurisdictional statement on contract, warranty, termite disclosure doc or guarantee (or incomplete/incorrect) (§7.145(a))	§7.161(16)	S1
Failure to notify change of employers - Certified applicator/technician (§7.126/§7.142)	§7.161(20)	S1
Failure to maintain emergency waivers	§7.146/§7.148(d)	S1

Failure to register (§7.142(b))	§7.161(11)	S2
Failure to notify of loss of responsible certified applicator (§7.128(b))	§7.161(14)	S2
Application/service performed inconsistent w/ treatment disclosure	§7.172(c)	S2
Incomplete termite disclosure documents/termite disclosure documents violations	§7.174	S2
Apprentice performing WDI Report	§7.175(a)	S2
Failure to provide accurate/incomplete WDIR inspection	§7.175(a)	S2
Any violation regarding IPM Program essential elements	§7.150(a)	S2
Failure to post WDIR/Termite Post-Treatment Sticker	§7.177/§7.172(d)	S2
Non-commercial doing business as commercial or more than one employer without additional license(s)	§7.131	S3
Any FIFRA violation - unlabeled container (§7.71)	§7.161(8)	S3
Any violation of label instructions regarding use, storage or disposal	§7.161(12)	S3
Use inconsistent with labeling.	§7.161(12)	S3
Failure to supervise (§7.143/§7.133)	§7.161(19)	S3
Any violation of Department Rule on Pretreats not otherwise addressed herein.	§7.173	S3
Operating out of category	§7.161(10)	S3
Performing work w/out supervision in a category an apprentice is not properly trained in (§7.133(h))	§7.161(10)	S3
Failure to provide label upon request of consumer	§7.147	S1
Failure of school or day-care to notify parents	§7.148	S1
Failure of apartment management or employers to post notice and provide CIS Sheets	§7.148(c)	S1
Use records incomplete (§7.144)	§7.161(13)	S1
No known address or incorrect address for business/noncommercial (§7.122)	§7.161(18)	S1
Failure to meet maintain technician and/or Apprentice training records (§7.133)	§7.161(23)	S1
Failure to post/provide a pest control sign (§7.146)	§7.161(25)	S1
Failure to make available CIS upon request	§7.147	S1
Failure to cooperate/allow inspection or provide information/records or providing false information (§7.149/§7.156)	§7.161(7)	S3
Insurance lapse/No insurance (§7.123)	§7.161(21)	S2
Cheating/Unauthorized assistance on exams	§7.125(10)-(15)	S2
Failure to maintain Use Records (§7.144)	§7.161(13)	S2
Failure to comply with IPM in schools	§7.150(c)	S2
Making a pesticide application inconsistent with pesticide use in schools	§7.150(d)	S3
Intentional misrepresentation of any insect or infestation for purpose of selling a service	§7.161(1)	S3
Use of another's/nonexistent license number	§7.161(1)	S3
Falsifying application for license	§7.161(2)	S3
Any violation of the label which causes environmental problem	§7.161(8)	S3
Working in a manner which could be injurious	§7.161(8)	S3
Use of cancelled or unregistered Pesticides not approved under	§7.161(12)	S3

Tx Ag Code §76.041/25(b)		
Failure to issue any fumigation label required CIS	§7.161(12)	S3
Post construction treatment made at less than label volume/rate	§7.172(a)	S3
Pre-construction treatment made at less than label volume/rate	§7.173(a), (b)	S3
Any fumigation violation besides label violations	§7.178	S3
Operating without a license	§7.121	S3
Failure to meet minimum continuing education/technician training requirements (§7.133(h)/§7.134(b))	§7.161(22)	S2
First time (and subsequent) offenders that operate without the proper license after a demonstration of prior knowledge of the SPCS requirements.*	$5,000	
Fraud	$5,000	
Grossly negligent or Intentional poisoning of a person or animal	$5,000	
Repetitive or unreasonable refusal to allow the Department to exercise its legal authority to inspect licensees and/or investigate complaints.	$5,000	
Violations involving Institutional Disregard for compliance	$5,000	

In agreed settlements, the Texas Structural Pest Control Service may consider inclusion of educational requirements, development and implementation of quality assurance programs, supplemental environmental projects, and public service projects of equal or greater value, letters of apology, and/or voluntary surrender of a license to offset all or part of a penalty.

* not late renewal

TRD-201302239
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 31, 2013

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Capital Area Rural Transportation System

Request for Proposals

The Capital Area Rural Transportation System (CARTS) district, a rural/urban transit district serving a nine-county region surrounding Austin, Texas, including the San Marcos Urbanized Area (UZA), requests proposals from qualified firms for planning services for its San Marcos UZA that will enable CARTS and the City of San Marcos to guide the development of transit services locally over the next five years.

Request for Proposal documents will be available on June 12, 2013 and can be obtained by qualified vendors by sending a request to RFP@RideCARTS.com. A pre-proposal conference will be held on June 21, 2013 at CARTS Headquarters, 2010 E. 6th Street, Austin, Texas 78702.

Proposals must be submitted on or before 2:00 p.m. CDT, July 16, 2013 to be considered.

TRD-201302283
Michelle Maronde
Assistant General Manager, Finance
Capital Area Rural Transportation System
Filed: June 5, 2013

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Comptroller of Public Accounts

Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of award for Professional Certified Public Accounting Services for the Texas Prepaid Higher Education Tuition Board. The Request for Proposals (RFP 206c) was published in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1246).

The contract was awarded to Padgett, Stratemann & Co., L.L.P., 811 Barton Springs Road, Suite 550, Austin, TX 78704. The total amount of the contract is not to exceed $212,300.00. The term of the contract is May 28, 2013 through August 31, 2014, with option to renew for up to three (3) additional one (1) year periods, one (1) year at a time.

TRD-201302223
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 31, 2013

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Notice of Request for Proposals

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, of the Texas Government Code as well as the Texas Tax Code, as applicable, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 207a ("RFP") to acquire the services of a qualified consultant, firm, or individual to serve as an "as-needed" statistical consultant to Comptroller and to provide other related services to Comptroller's Property Tax Assistance Division. The successful respondent will be expected to begin performance of the contract on or after September 1, 2013.

Contact: Parties interested in a hard copy of the RFP should contact Jennifer W. Sloan, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673. The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: http://esbd.cpa.state.tx.us on Friday, June 14, 2013, after 10:00 a.m., CT.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m., CT, on Friday, June 28, 2013. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or email Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. On or about Friday, July 12, 2013, Comptroller expects to post responses to questions on the ESBD as an RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m., CT, on Friday, July 26, 2013. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller shall make the final decision on any contract award or awards resulting from the RFP. Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of the RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 14, 2013, after 10:00 a.m., CT; Questions Due - June 28, 2013, 2:00 p.m., CT; Official Responses to Questions posted - July 12, 2013, or as soon thereafter as practical; Proposals Due - July 26, 2013, 2:00 p.m., CT; Contract Execution - September 1, 2013, or as soon thereafter as practical; and Commencement of Project Activities - on or after September 1, 2013. Any amendment to this solicitation will be posted on the ESBD as an RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201302272
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 5, 2013

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/03/13 - 06/09/13 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 06/03/13 - 06/09/13 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-201302270
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 4, 2013

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Court of Criminal Appeals

Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for prosecutors, prosecutor office personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, or other persons as provided by statute.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for law enforcement officers, law students, criminal defense attorneys, prosecuting attorneys, judges, or other persons as provided by statute.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act. The grant period is September 1, 2013 through August 31, 2014. The deadline for applications is July 1, 2013. To request an application packet or more information, please contact the Judicial Education Section of the Texas Court of Criminal Appeals:

205 West 14th Street, Suite 103

Austin, Texas 78701

(512) 475-2312

e-mail: judicial.education@cca.courts.state.tx.us

www.cca.courts.state.tx.us/jcptfund/jcptfundhome.asp

TRD-201302263
Abel Acosta
Clerk of the Court
Court of Criminal Appeals
Filed: June 4, 2013

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East Texas Council of Governments

Request for Proposals for Senior Nutrition Services

East Texas Council of Governments (ETCOG) operates a year-round Senior Nutrition Program, which provides daily nutritious hot lunchtime meals to East Texas residents who are sixty (60) years of age or older for congregate (dining for meals, socialization and public education) and home-delivered meals (delivered to homebound

clients, by paid staff and volunteers, to clients' homes) in Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt and Wood counties.

ETCOG is seeking proposals from qualified individuals, organizations or agencies to prepare and serve approximately 84,196 congregate meals and approximately 229,315 home-delivered meals. In order to be considered for funding, ETCOG must receive proposals no later than 5:00 p.m. on July 3, 2013 (CST). Please visit www.etcog.org to download the request for proposal instructions.

TRD-201302255
David Cleveland
Executive Director
East Texas Council of Governments
Filed: June 4, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 15, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 15, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ABRAHIM, INCORPORATED dba Lake Stop Store; DOCKET NUMBER: 2013-0219-PST-E; IDENTIFIER: RN102245594; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: ALTOGA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0569-PWS-E; IDENTIFIER: RN101436152; LOCATION: Princeton, Collin County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(e); PENALTY: $213; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Arrowhead Pipeline, L.P.; DOCKET NUMBER: 2013-0028-AIR-E; IDENTIFIER: RN100212000; LOCATION: Sweeny, Brazoria County; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3162, Special Terms and Conditions Number 7, and New Source Review Permit Number 79228, Special Conditions Number 16, by failing to comply with the permitted fuel flow limits for the compressor engines; PENALTY: $18,750; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Azteca Milling, L.P.; DOCKET NUMBER: 2013-0265-IWD-E; IDENTIFIER: RN102166758; LOCATION: Dawn, Deaf Smith County; TYPE OF FACILITY: grain milling operation; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0004052000, Part IV. Conditions of the Permit, Application Rates, by failing to maintain the biochemical oxygen demand (5-day) permitted application rate of 100 pounds per acre per day; 30 TAC §305.125(1) and (9)(A) and TCEQ Permit Number WQ0004052000, Part VI. Standard Conditions, Monitoring Requirements Number 7(c), by failing to report any effluent violation which deviates from the permitted limits by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events for the months of September - December 2011 and January - August 2012; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0004052000, Part IV. Conditions of the Permit, Monitoring, by failing to comply with permitted effluent limitations; PENALTY: $56,000; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: BASF Corporation; DOCKET NUMBER: 2013-0266-AIR-E; IDENTIFIER: RN100218049; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 1733A, Special Conditions Numbers 1 and 10, and Federal Operating Permit Number O1926, Special Terms and Conditions Number 11, by failing to comply with the maximum allowable emissions rates for volatile organic compounds and carbon monoxide, and to maintain a destruction and removal efficiency of at least 98% at R-170 Catalytic Incinerator; PENALTY: $250,000; Supplemental Environmental Project offset amount of $125,000 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Street, Suite H, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Bishnu Shiwakoti dba Outback Market; DOCKET NUMBER: 2013-0338-PST-E; IDENTIFIER: RN102249745; LOCATION: Krum, Denton County; TYPE OF FACILITY: convenience

store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Blackjack Water Supply Corporation; DOCKET NUMBER: 2013-0596-PWS-E; IDENTIFIER: RN101436608; LOCATION: Cherokee County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report to each bill paying customer and the TCEQ by July 1 of each year; and 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the running annual average; PENALTY: $230; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Bobby L. Starkey dba Starkeys 2; DOCKET NUMBER: 2013-0350-PST-E; IDENTIFIER: RN101732451; LOCATION: Avinger, Cass County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512)239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Brookshire Grocery Company; DOCKET NUMBER: 2013-0116-PST-E; IDENTIFIER: RN102998994; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,875; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Central Transport, Incorporated; DOCKET NUMBER: 2012-2509-IWD-E; IDENTIFIER: RN102446523; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: transportation company; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge storm water associated with industrial activities; PENALTY: $7,500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(11) COMPANY: City of Gladewater; DOCKET NUMBER: 2013-0380-PWS-E; IDENTIFIER: RN101176832; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(d)(2)(E), by failing to provide an air gapped connection to waste for filter-to-waste connections; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assemblies which are installed to provide protection against health hazards and certified to be operating within specifications tested at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a chloramine residual of 0.5 milligrams per liter throughout the distribution system at all times; 30 TAC §290.46(s)(2)(B)(iii), by failing to calibrate the individual filter effluent online turbidimeters at least once every 90 days using primary standards; 30 TAC §290.42(d)(11)(F)(vii), by failing to provide air scour backwash or surface wash facilities for filters installed after January 1, 1996; 30 TAC §290.46(f)(2), (3)(A)(i)(I) and (iv), by failing to provide facility records to commission personnel at the time of an investigation; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $4,880; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: City of Houston; DOCKET NUMBER: 2013-0085-PST-E; IDENTIFIER: RN102393915; LOCATION: Houston, Harris County; TYPE OF FACILITY: emergency generator with an underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; Supplemental Environmental Project offset amount of $4,000 applied to Bayou Land Conservancy fka Legacy Land Trust - Spring Creek Greenway Project; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Thornton; DOCKET NUMBER: 2013-0258-PWS-E; IDENTIFIER: RN101239580; LOCATION: Thornton, Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the maximum containment level (MCL) for total coliform for the month of July 2012 and by failing to provide public notification regarding the MCL exceedance for the month of July 2012; and 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the month of July 2012 and by failing to provide public notice for failing to conduct coliform monitoring for the month of July 2012; PENALTY: $594; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: City of Trinidad; DOCKET NUMBER: 2013-0230-PWS-E; IDENTIFIER: RN101386514; LOCATION: Trinidad, Henderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.42(f)(1)(C), by failing to provide all chemical bulk storage facilities and day tanks with a label that identifies the facility's or tank's contents; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines every five feet either by the use of a label or by various colors of paint; 30 TAC §290.42(d)(12), by failing to provide good drainage in the pipe gallery which is provided by sloping floors, gutters, and sumps; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain the residual disinfectant concentration within

the distribution system at a minimum of 0.5 milligrams per liter total chlorine; and 30 TAC §290.42(d)(11)(F)(iv)(I), by failing to provide backwash facilities capable of expanding a mixed-media filter bed with air scour at least 15% during the backwash cycle; PENALTY: $992; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: David Peters dba Excel Ready Mix; DOCKET NUMBER: 2013-0111-AIR-E; IDENTIFIER: RN106542319; LOCATION: Odessa, Ector County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a concrete batch plant; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(16) COMPANY: Endeavor Energy Resources, L.P.; DOCKET NUMBER: 2013-0197-AIR-E; IDENTIFIER: RN105016794; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: crude petroleum and natural gas plant; RULE VIOLATED: 30 TAC §§122.121, 122.133(4) and 122.241(b) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months prior to the expiration of a General Operating Permit; PENALTY: $3,438; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(17) COMPANY: HASOR ENTERPRISE, INCORPORATED dba Circle M 2; DOCKET NUMBER: 2012-2490-PST-E; IDENTIFIER: RN101383115; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2013-0150-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O2288, Special Terms and Conditions (STC) Number 19, New Source Review (NSR) Permit Number 19823, Special Conditions (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O1320, STC Number 15, NSR Permit Number 5972A, SC Number 1, and THSC, §382.085(b), by failing to comply with the permitted emissions rate of 14.68 pounds per hour of volatile organic compounds, as reported in the semi-annual deviation report for the period of August 19, 2011 - February 18, 2012; PENALTY: $13,126; Supplemental Environmental Project offset amount of $5,250 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Jaya Kali, Incorporated dba Kwik Pantry 2; DOCKET NUMBER: 2013-0334-PST-E; IDENTIFIER: RN102351145; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: KSHITIJ LLC dba Lakeside Food Store; DOCKET NUMBER: 2013-0236-PST-E; IDENTIFIER: RN101668085; LOCATION: Morgan, Bosque County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: KV Land, LLC; DOCKET NUMBER: 2013-0135-IWD-E; IDENTIFIER: RN101062826; LOCATION: Bacliff, Galveston County; TYPE OF FACILITY: electric generating station; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0001050000, Final Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 3, for Outfall Number 401, by failing to comply with permitted effluent limitations for the monitoring periods ending December 31, 2011 - September 30, 2012; and 30 TAC §21.4 and TWC, §5.702, by failing to pay outstanding consolidated water quality late fees for TCEQ Financial Account Number 23000170 for Fiscal Year 2013; PENALTY: $7,350; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Leedo Manufacturing Company, L.P.; DOCKET NUMBER: 2013-0355-AIR-E; IDENTIFIER: RN100222157; LOCATION: El Campo, Wharton County; TYPE OF FACILITY: cabinet manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1083, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: $3,562; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning; DOCKET NUMBER: 2013-0228-SLG-E; IDENTIFIER: RN103147559; LOCATION: Beeville, Bee County; TYPE OF FACILITY: sludge transporter business; RULE VIOLATED: 30 TAC §312.142(a) and (d), by failing to renew an existing TCEQ Sludge Transporter Registration by June 15 of the year in which the registration expired; PENALTY: $4,750; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: MEMC PASADENA, INCORPORATED; DOCKET NUMBER: 2012-2036-AIR-E; IDENTIFIER: RN101062099; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Air Permit Number 9597, Special Conditions Number 1, and Federal Operating Permit Number O1412, Special Terms and Conditions Number 12, by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and Federal Operating Permit Number O1412, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days of the end of the certification period; PENALTY: $11,401; ENFORCEMENT COORDINATOR:

Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Mohammad Aleem dba Camden Store; DOCKET NUMBER: 2013-0020-PST-E; IDENTIFIER: RN102266442; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $5,062; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: SherBart Holdings, Incorporated dba Sherry's; DOCKET NUMBER: 2013-0243-PST-E; IDENTIFIER: RN101804821; LOCATION: Pleasanton, Atascosa County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,813; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: Sid Richardson Carbon, LTD.; DOCKET NUMBER: 2012-2164-AIR-E; IDENTIFIER: RN100222413; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: carbon black manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for Incident Number 168666 no later than 24 hours after the discovery of the emissions event; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Numbers 1867A and PSDTX1032, Special Conditions (SC) Number 1A, by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(B) and THSC, §382.085(b), by failing to identify the individually listed compounds or mixtures of air contaminants released during the emissions event that occurred on August 7, 2012 (Incident Number 171999); 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and Permit Numbers 1867A and PSDTX1032, SC Number 1A and 2, by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and Federal Operating Permit Number O-1414, General Terms and Conditions, by failing to report completely and adequately all instances of deviations; PENALTY: $10,431; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(28) COMPANY: TEXAS INTERNATIONAL TERMINALS LTD; DOCKET NUMBER: 2013-0326-AIR-E; IDENTIFIER: RN102501160; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: bulk materials handling and storage; RULE VIOLATED: 30 TAC §101.201(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to report an excess opacity event; and 30 TAC §101.5 and THSC, §382.085(b), by failing to prevent visible emissions from causing a traffic hazard or interfering with normal road use; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: TOOR ENTERPRISES, INCORPORATED dba Sun Mart 392; DOCKET NUMBER: 2013-0365-PST-E; IDENTIFIER: RN102396298; LOCATION: Huffman, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months; PENALTY: $2,971; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Woden Independent School District; DOCKET NUMBER: 2012-0866-MWD-E; IDENTIFIER: RN102887213; LOCATION: Woden, Nacogdoches County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TCEQ Permit Number WQ0014345001, Operational Requirements (OR) Number 8(a), and 30 TAC §305.126(a), by failing to initiate engineering and financial planning for expanding/upgrading the wastewater treatment plant/collection system or submit a waiver request, when the average permitted flow reaches 75% for three consecutive months; TCEQ Permit Number WQ0014345001, Special Provisions (SP) Number 10, and 30 TAC §305.125(1), by failing to submit a plan for review, revision, and approval describing how the imported soils will be incorporated into the soils and how erosion will be prevented in the affected areas no later than 90 days prior to construction; TCEQ Permit Number WQ0014345001, OR Number 1, and 30 TAC §305.125(5), by failing to properly operate and maintain all units of collection, treatment and disposal; TCEQ Permit Number WQ0014345001, Effluent Limitations and Monitoring Requirements A and 30 TAC §305.125(1), by failing to comply with permitted effluent limits; TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 7(c) and 30 TAC §305.125(1), by failing to submit notification of violations when values exceed the permitted limits by greater than 40%; TCEQ Permit Number WQ0014345001, Monitoring and Reporting Requirements Number 2, and 30 TAC §319.11 and §305.125(1), by failing to properly complete chain of custody forms; TCEQ Permit Number WQ0014345001, SP Number 15, and 30 TAC §305.125(1), by failing to submit the results of the annual soil samples for the years 2009 - 2011 no later than September 30 of each sampling year; TCEQ Permit Number WQ0014345001, SP Number 16, and 30 TAC §305.125(1), by failing to analyze the irrigation effluent for nitrates, total Kjeldahl nitrogen and total phosphorus from grab samples of the filtered effluent prior to injection into the dripper lines in January and July for the years of 2009 - 2012; TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3(c)(ii), (iii), and (vi) and 30 TAC §305.125(1) and (11)(B), by failing to maintain records of monitoring activities; TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 2(a), and 30 TAC §319.11, by failing to maintain secondary standards used to perform accuracy checks; TCEQ Permit Number WQ0014345001, Monitoring Requirements Number 3(b), and 30 TAC §305.125(1), by failing to have records readily available for review by a TCEQ representative; TCEQ Permit Number WQ0014345001, SP Number 9, and 30 TAC §305.125(1), by failing to monitor the treated effluent for total suspended solids once per week by grab sample; TCEQ Permit Number WQ0014345001, SP Number 18, and 30 TAC §305.125(1), by failing to submit the annual report for sludge removal to the TCEQ Beaumont Regional Office and the Enforcement Division by September 1st of each year; and TCEQ Permit Number WQ0014345001, SP Number 5, and 30 TAC §305.125(1), by failing to submit to the TCEQ Wastewater Permitting Section a summary submittal letter in accordance with 30 TAC §217.6(c) no later than 90 days from the date of permit issuance; PENALTY: $33,475; Supplemental Environmental Project offset amount of $26,780 applied to Module Treatment Plant; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(31) COMPANY: ZAMAN-NASEER PROPERTIES, LLC dba Aneels Texaco; DOCKET NUMBER: 2013-0207-PST-E; IDENTIFIER: RN101726982; LOCATION: Channelview, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by

failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (512) 239-2578; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201302262
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 4, 2013

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Enforcement Orders

An agreed order was entered regarding TEXAS PLEASANT VALLEY ENTERPRISES, INC. dba C-Mart Food Store 7, Docket No. 2010-1722-PST-E on May 16, 2013 assessing $3,675 in administrative penalties with $735 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2012-0371-PST-E on May 16, 2013 assessing $5,000 in administrative penalties with $1,000 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 I Star Enterprises Inc. dba In & Out Express #1, Docket No. 2012-0527-PST-E on May 16, 2013 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2012-0883-PST-E on May 16, 2013 assessing $1,875 in administrative penalties with $375 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 Barry Boes dba Boes Cable Ski Lake, Docket No. 2012-1542-EAQ-E on May 16, 2013 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Medistar Victory SA Hospital, LP, formerly FAE Holdings 411560R, and Victory Landmark Real Estate, LLC, Docket No. 2012-1749-EAQ-E on May 16, 2013 assessing $5,265 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zaradam LLC dba Dry Clean City, Docket No. 2012-1819-MLM-E on May 16, 2013 assessing $3,275 in administrative penalties with $655 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 Lighthouse Environmental Services, Inc., Docket No. 2012-1933-IHW-E on May 16, 2013 assessing $4,875 in administrative penalties with $975 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 ASPRI INVESTMENTS, LLC dba Aenm Corner Store, Docket No. 2012-2049-PST-E on May 16, 2013 assessing $3,882 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GANDAF USA, INC. dba Super Food Mart 1, Docket No. 2012-2100-PST-E on May 16, 2013 assessing $5,625 in administrative penalties with $1,125 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 WESTERN "66" COMPANY dba The Cardstop, Docket No. 2012-2132-PST-E on May 16, 2013 assessing $3,375 in administrative penalties with $675 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 E&W Investments L.L.C. dba Sunmart 138, Docket No. 2012-2147-PST-E on May 16, 2013 assessing $5,542 in administrative penalties with $1,108 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 Khalil El-Kasih dba C & D Grocery, Docket No. 2012-2154-PST-E on May 16, 2013 assessing $3,891 in administrative penalties with $778 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Halliburton dba Jacks Drive In, Docket No. 2012-2171-PST-E on May 16, 2013 assessing $3,299 in administrative penalties with $659 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIMRAH CORPORATION, INC. dba Jim's E-Z Way, Docket No. 2012-2196-PST-E on May 16, 2013 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walker County Hospital Corporation dba Huntsville Memorial Hospital, Docket No. 2012-2197-PST-E on May 16, 2013 assessing $7,126 in administrative penalties with $1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STATE LINE BUSINESS INC dba State Line Food Mart, Docket No. 2012-2212-PST-E on May 16, 2013 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BM GROCERY STORE, INC., Docket No. 2012-2220-PST-E on May 16, 2013 assessing $3,880 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PESHAWAR INC dba Super Stop 4, Docket No. 2012-2235-PST-E on May 16, 2013 assessing $4,687 in administrative penalties with $937 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FEMIO, INC. dba Femio Mobil, Docket No. 2012-2282-PST-E on May 16, 2013 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding International A.L.E.R.T. Academy, Docket No. 2012-2293-PST-E on May 16, 2013 assessing $3,975 in administrative penalties with $795 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & L LUCKY STOP, LLC dba Keith Mart, Docket No. 2012-2295-PST-E on May 16, 2013 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U & K LLC dba R M Foods, Docket No. 2012-2298-PST-E on May 16, 2013 assessing $3,663 in administrative penalties with $732 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2012-2314-PST-E on May 16, 2013 assessing $3,375 in administrative penalties with $675 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 Hydro Conduit of Texas, LP, Docket No. 2012-2316-IWD-E on May 16, 2013 assessing $2,875 in administrative penalties with $575 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 SPT Interests LLC dba The Washboard, Docket No. 2012-2321-PST-E on May 16, 2013 assessing $7,088 in administrative penalties with $1,417 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KEPR CORPORATION dba Ore City Fina, Docket No. 2012-2335-PST-E on May 16, 2013 assessing $6,000 in administrative penalties with $1,200 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 Mirasaad Mousavijam dba East Point Market, Docket No. 2012-2338-PST-E on May 16, 2013 assessing $4,259 in administrative penalties with $851 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL STOP, L.P. dba Total Stop Mt. Pleasant, Docket No. 2012-2379-PST-E on May 16, 2013 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHIVAMSAGAR INC. dba Northend Grocery, Docket No. 2012-2384-PST-E on May 16, 2013 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 Mansoor Trading Corporation dba Express Food Mart, Docket No. 2012-2407-PST-E on May 16, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RRL Ventures, Inc. dba SP Food Mart, Docket No. 2012-2411-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 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 Air Liquide Large Industries U.S. LP, Docket No. 2012-2413-IWD-E on May 16, 2013 assessing $4,970 in administrative penalties with $994 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Woodsboro, Docket No. 2012-2414-PWS-E on May 16, 2013 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Denton, Docket No. 2012-2444-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Omar Vela dba O Marias, Docket No. 2012-2447-PST-E on May 16, 2013 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator at (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HASS ENTERPRISES, INC. dba Pay N Save, Docket No. 2012-2448-PST-E on May 16, 2013 assessing $2,943 in administrative penalties with $588 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Parcel Service, Inc., Docket No. 2012-2466-AIR-E on May 16, 2013 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Cate, Docket No. 2012-2483-AGR-E on May 16, 2013 assessing $1,312 in administrative penalties with $262 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 CENTRAL DISPATCH, INC., Docket No. 2012-2497-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & K Karam, Inc. dba Big Star Food Mart, Docket No. 2012-2504-PST-E on May 16, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKESHORE UTILITY COMPANY dba The Reserve, Docket No. 2012-2522-PWS-E on May 16, 2013 assessing $276 in administrative penalties with $55 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.J.C. Rental of Texas, Ltd., Docket No. 2012-2527-PST-E on May 16, 2013 assessing $3,893 in administrative penalties with $778 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sealy Independent School District, Docket No. 2012-2537-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 Jon Schultz dba Schultz's Kountry Korner, Docket No. 2012-2582-PST-E on May 16, 2013 assessing $2,942 in administrative penalties with $588 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tarkington Independent School District, Docket No. 2012-2588-PST-E on May 16, 2013 assessing $3,750 in administrative penalties with $750 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 Lamar Consolidated Independent School District, Docket No. 2012-2613-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Woodville, Docket No. 2012-2624-MSW-E on May 16, 2013 assessing $1,250 in administrative penalties with $250 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 Chaudhry & Sons, Inc. dba Kuykendahl Citgo, Docket No. 2012-2639-PST-E on May 16, 2013 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crockett Independent School District, Docket No. 2012-2642-PST-E on May 16, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIN Inc., Docket No. 2012-2649-AIR-E on May 16, 2013 assessing $3,188 in administrative penalties with $637 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ochiltree County, Docket No. 2012-2651-PWS-E on May 16, 2013 assessing $720 in administrative penalties with $144 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-W CONSTRUCTION, INC., Docket No. 2012-2690-AIR-E on May 16, 2013 assessing $1,150 in administrative penalties with $230 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Star Business Inc. dba Express Store, Docket No. 2012-2702-PST-E on May 16, 2013 assessing $2,888 in administrative penalties with $577 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilot Travel Centers LLC, Docket No. 2012-2708-WQ-E on May 16, 2013 assessing $1,000 in administrative penalties with $200 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 FJ TRADE INC dba PMI 1, Docket No. 2012-2727-PST-E on May 16, 2013 assessing $3,134 in administrative penalties with $626 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 CHUN, L.L.C. dba Villager Grocery, Docket No. 2012-2729-PST-E on May 16, 2013 assessing $4,193 in administrative penalties with $838 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H&C Fuels, LLC, Docket No. 2012-2736-PST-E on May 16, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DELKO SERVICES, L.L.C. dba Lee's Shell, Docket No. 2013-0014-PST-E on May 16, 2013 assessing $3,375 in administrative penalties with $675 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 PILOT TRAVEL CENTERS LLC dba Pilot Travel Center 432, Docket No. 2013-0051-PST-E on May 16, 2013 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Joaquin, Docket No. 2013-0066-PWS-E on May 16, 2013 assessing $517 in administrative penalties with $103 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dome Petrochemical, L.C., Docket No. 2009-0449-AIR-E on May 22, 2013 assessing $39,059 in administrative penalties with $7,811 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calvin Court, Docket No. 2011-0364-IHW-E on May 22, 2013 assessing $13,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zenergy, Inc., Docket No. 2011-0660-AIR-E on May 22, 2013 assessing $265,562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Global New Millennium Partners, Ltd., Docket No. 2011-0816-PST-E on May 22, 2013 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy Richardson, Docket No. 2011-1016-MLM-E on May 22, 2013 assessing $61,017 in administrative penalties with $57,417 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Phillicia K. Dean dba Annex Cleaners 2 and Mary L. Shumaker dba Annex Cleaners 2, Docket No. 2011-1133-DCL-E on May 22, 2013 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Utility Company, Docket No. 2011-1171-PWS-E on May 22, 2013 assessing $21,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laddie Machacek dba Bill Holley Centre, Docket No. 2011-1195-PWS-E on May 22, 2013 assessing $3,893 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garcha Corporation, Docket No. 2011-1298-PST-E on May 22, 2013 assessing $15,634 in administrative penalties with $12,034 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2011-1461-AIR-E on May 22, 2013 assessing $92,450 in administrative penalties with $18,490 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert E. Heard, Jr., Docket No. 2011-1819-MLM-E on May 22, 2013 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XUAN, INC., Docket No. 2011-1840-PST-E on May 22, 2013 assessing $10,317 in administrative penalties with $6,717 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Addie Marlin dba Marlin Marina Water System, Docket No. 2011-2069-PST-E on May 22, 2013 assessing $3,815 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sullivan City, Docket No. 2011-2190-MSW-E on May 22, 2013 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Blanca Cruz dba Las Mananitas Mexican Restaurant, Docket No. 2011-2322-PWS-E on May 22, 2013 assessing $25,904 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2012-0135-AIR-E on May 22, 2013 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2012-0402-AIR-E on May 22, 2013 assessing $14,688 in administrative penalties with $2,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, TCEQ Enforcement Division (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kawa Tahasalih dba Jupiter Fina, Docket No. 2012-0794-PST-E on May 22, 2013 assessing $6,246 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Josephine, Docket No. 2012-0872-MWD-E on May 22, 2013 assessing $48,770 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cypress Hills Limited dba The Challenge at Cypress Hills, Docket No. 2012-1003-PWS-E on May 22, 2013 assessing $2,490 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frankston Rural Water Supply Corporation, Docket No. 2012-1174-PWS-E on May 22, 2013 assessing $1,277 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRUSH COUNTRY DEVELOPMENT CORPORATION, Docket No. 2012-1188-PWS-E on May 22, 2013 assessing $3,669 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harry Wurzbach Retail, Inc. dba Diamond Express 1, Docket No. 2012-1221-PST-E on May 22, 2013 assessing $22,835 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2012-1361-AIR-E on May 22, 2013 assessing $53,850 in administrative penalties with $10,770 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trophy Club Municipal Utility District No. 1, Docket No. 2012-1367-MWD-E on May 22, 2013 assessing $50,500 in administrative penalties with $10,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator, TCEQ Enforcement Division (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Blanco, Docket No. 2012-1453-MWD-E on May 22, 2013 assessing $36,063 in administrative penalties with $7,212 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Petra Petroleum Management LLC dba Parkway Mobil Mart 2, Docket No. 2012-1506-PST-E on May 22, 2013 assessing $12,826 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S S A Properties Inc dba Bunnys Down Town, Docket No. 2012-1538-PST-E on May 22, 2013 assessing $7,628 in administrative penalties with $1,525 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boundary Ventures, Inc., Docket No. 2012-1554-MLM-E on May 22, 2013 assessing $9,653 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sereno LLC dba Oak Creek Mobile Home Park, Docket No. 2012-1561-MWD-E on May 22, 2013 assessing $10,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRANDE-WEST END, LLC, Docket No. 2012-1578-PST-E on May 22, 2013 assessing $8,438 in administrative penalties with $1,687 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers LLC, Docket No. 2012-1619-AIR-E on May 22, 2013 assessing $20,600 in administrative penalties with $4,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Merito Retail, Inc. dba Step In, Docket No. 2012-1622-PST-E on May 22, 2013 assessing $17,725 in administrative penalties with $3,545 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Odessa, Docket No. 2012-1626-MWD-E on May 22, 2013 assessing $7,937 in administrative penalties with $1,587 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEKNI-PLEX, INC., Docket No. 2012-1629-AIR-E on May 22, 2013 assessing $11,000 in administrative penalties with $2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-3921, 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. 2012-1672-AIR-E on May 22, 2013 assessing $41,502 in administrative penalties with $8,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plainview, Docket No. 2012-1700-PWS-E on May 22, 2013 assessing $15,822 in administrative penalties with $3,164 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SODA WATER SUPPLY CORPORATION, Docket No. 2012-1725-PWS-E on May 22, 2013 assessing $510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Crates & Pallets Management, L.L.C., Docket No. 2012-1739-AIR-E on May 22, 2013 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Chico, Docket No. 2012-1746-MWD-E on May 22, 2013 assessing $33,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Huntsman International Fuels LLC, Huntsman Propylene Oxide LLC, ISP Water Management Services LLC, and TPC Group LLC, Docket No. 2012-1760-IWD-E on May 22, 2013 assessing $36,800 in administrative penalties with $7,360 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pine Tree Independent School District, Docket No. 2012-1764-PST-E on May 22, 2013 assessing $18,500 in administrative penalties with $3,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Sarah Davis, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Pipeline Texas, L.L.C., Docket No. 2012-1818-AIR-E on May 22, 2013 assessing $33,825 in administrative penalties with $6,765 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Travis County Municipal Utility District No. 10, Docket No. 2012-1852-PWS-E on May 22, 2013 assessing $183 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, TCEQ Enforcement Division (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding M & M WEST DAVIS INC dba Diamond Mart, Docket No. 2012-1910-PST-E on May 22, 2013 assessing $10,632 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2012-1955-MWD-E on May 22, 2013 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.N.N.V. ENTERPRISES, INC. dba Oak Grove Grocery, Docket No. 2012-1968-PST-E on May 22, 2013 assessing $7,959 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Georgetown, Docket No. 2012-1972-MWD-E on May 22, 2013 assessing $15,000 in administrative penalties with $3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2012-2037-IWD-E on May 22, 2013 assessing $22,500 in administrative penalties with $4,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Abel Becerra, Jr., Docket No. 2012-2062-MSW-E on May 22, 2013 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Atlas Woodworks, LLC, Docket No. 2012-2064-IWD-E on May 22, 2013 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney, TCEQ Litigation Division (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skidmore Water Supply Corporation, Docket No. 2012-2078-MWD-E on May 22, 2013 assessing $6,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4575, 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. 2012-2086-AIR-E on May 22, 2013 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, TCEQ Enforcement Division (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weslaco, Docket No. 2012-2105-MWD-E on May 22, 2013 assessing $9,300 in administrative penalties with $1,860 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jonathan Law dba Roosters Orange Bar, Docket No. 2012-2116-PWS-E on May 22, 2013 assessing $714 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Glenn Thurman, Inc., Docket No. 2012-2127-WQ-E on May 22, 2013 assessing $8,017 in administrative penalties with $1,602 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 21 & 130 INC dba Mustang Travel Center, Docket No. 2012-2158-PST-E on May 22, 2013 assessing $7,635 in administrative penalties with $1,527 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRIFTWOOD EQUITIES, LTD., Docket No. 2012-2159-MWD-E on May 22, 2013 assessing $7,901 in administrative penalties with $1,580 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy Vinyls, LP, Docket No. 2012-2179-AIR-E on May 22, 2013 assessing $16,000 in administrative penalties with $3,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, TCEQ Enforcement Division (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronnie E. Day dba Lone Star Child Care Center, Docket No. 2012-2182-PWS-E on May 22, 2013 assessing $686 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A. & P. WATER SUPPLY CORPORATION, Docket No. 2012-2183-PWS-E on May 22, 2013 assessing $2,728 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greif Packaging LLC, Docket No. 2012-2201-AIR-E on May 22, 2013 assessing $18,600 in administrative penalties with $3,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phillips 66 Company, Docket No. 2012-2231-AIR-E on May 22, 2013 assessing $13,125 in administrative penalties with $2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, TCEQ Enforcement Division (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Polk Oil Company, Inc. dba Polk Pick It Up 6, Docs Country Store 2 and Northridge Quick Stop, Docket No. 2012-2233-PST-E on May 22, 2013 assessing $19,782 in administrative penalties with $3,956 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diocese of Victoria dba St. Mary's Catholic Church, Docket No. 2012-2304-PWS-E on May 22, 2013 assessing $2,310 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHWEST MARKETERS INC. dba Alamo Grocery, dba Circle N East, and dba Comanche Shell, Docket No. 2012-2325-PST-E on May 22, 2013 assessing $13,500 in administrative penalties with $2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bollinger Texas City, L.P., Docket No. 2012-2328-IWD-E on May 22, 2013 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nick Nevid, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2012-2329-AIR-E on May 22, 2013 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2012-2344-AIR-E on May 22, 2013 assessing $13,126 in administrative penalties with $2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2012-2355-AIR-E on May 22, 2013 assessing $12,525 in administrative penalties with $2,505 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul T. Bryant dba Shell Food Mart, Docket No. 2012-2372-PST-E on May 22, 2013 assessing $9,504 in administrative penalties with $1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joel McAlister, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northtown Municipal Utility District, Docket No. 2012-2391-WQ-E on May 22, 2013 assessing $4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Dupuis dba Dupuis Chevron, Docket No. 2012-2435-PST-E on May 22, 2013 assessing $9,625 in administrative penalties with $1,925 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VP FUEL MART INC, Docket No. 2012-2436-PST-E on May 22, 2013 assessing $8,406 in administrative penalties with $1,681 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S & K ENTERPRISE INC. dba Lake Conroe Food Mart, Docket No. 2012-2520-PWS-E on May 22, 2013 assessing $696 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CENTERVILLE WATER SUPPLY CORPORATION, Docket No. 2012-2671-PWS-E on May 22, 2013 assessing $172 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lone Oak, Docket No. 2012-2694-PWS-E on May 22, 2013 assessing $495 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201302278
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 5, 2013

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Notice of District Petition

Notices issued May 28, 2013.

TCEQ Internal Control No. D-04262013-033; Howard Barkley Wedemeyer (the "Petitioner") filed a petition for creation of Leander Municipal Utility District No. 1 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 269.58 acres located in Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Leander, Texas. By Resolution No. 09-004-00, effective February 5, 2009, the City of Leander,

Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) purchase, construct, acquire, maintain, and operate a water and wastewater system for residential and commercial purposes; (2) purchase, construct, acquire, maintain, and operate a drainage system; (3) purchase, construct, acquire, maintain, and operate recreational facilities; and (4) purchase, construct, and acquire road facilities. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $23,925,000.

TCEQ Internal Control No. D-04262013-035; Howard Barkley Wedemeyer (the "Petitioner") filed a petition for creation of Leander Municipal Utility District No. 3 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 174.76 acres located in Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Leander, Texas. By Resolution No. 09-004-00, effective February 5, 2009, the City of Leander, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will (1) purchase, construct, acquire, maintain, and operate a water and wastewater system for residential and commercial purposes; (2) purchase, construct, acquire, maintain, and operate a drainage system; (3) purchase, construct, acquire, maintain, and operate recreational facilities; and (4) purchase, construct, and acquire road facilities. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $21,655,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087.

For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201302277
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 5, 2013

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Notice of Water Quality Applications

The following notices were issued on May 24, 2013, through May 31, 2013.

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

METTON AMERICA INC which operates Metton America La Porte Plant, has applied for a renewal with minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002406000 to authorize the removal of Outfalls 003 and 004 from the permit. The existing permit authorizes the discharge of treated process wastewater, non-process wastewater, and stormwater at a daily average flow not to exceed 10,000 gallons per day via Outfall 001, and stormwater runoff at an intermittent and flow variable rate via Outfalls 003 and 004. The facility is located at 2727 Miller Cut-Off Road in the City of La Porte, Harris County, Texas 77571.

CITY OF MOULTON has applied for a renewal of TPDES Permit No. WQ0010227001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 242,000 gallons per day. The facility is located at 106 East Rose Boulevard, approximately three blocks south of the intersection of East Rose Boulevard and Moore Avenue in the City of Moulton in Lavaca County, Texas 77975.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 50 has applied for a renewal of TPDES Permit No. WQ0010243001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 540,000 gallons per day. The facility is located at 1122 Cedar Lane, northeast of the intersection of Cedar Lane and Hickory Ridge Drive, one mile northwest of the intersection of State Highway 146 (Bayport Boulevard) and State Highway-NASA 1 (NASA Boulevard) in Harris County, Texas 77586.

THE ESTATE OF PATRICK GENE CHAPMAN SR AND CATHERINE NAOMI WYLIE ADMINISTRATRIX have applied for a renewal of TPDES Permit No. WQ0013964001, 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 450 feet west of U.S. Highway 90, three miles northeast of the intersection of U.S. Highway 90 and Farm-to-Market Road 2100 at 5127 Highway 90, Crosby in Harris County, Texas 77532.

AUSTIN COUNTY WATER SUPPLY CORPORATION has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014423001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 14,000 gallons per day. The facility is located approximately 3 miles east of Highway 36 on Coshatte Road in Austin County, Texas 77418.

HAMSHIRE COMMUNITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014899001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The facility is located approximately 0.6 mile north-northeast of Hamshire High School, southeast of the Interstate Highway 10 crossing of South Fork of Taylor Bayou, and 7,600 feet east-southeast of Interstate Highway 10 at West Hamshire Road in Jefferson County, Texas 77622.

HUFFSMITH KOHRVILLE INC has applied for a renewal of TPDES Permit No. WQ0014923001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 1,300 feet east of Farm-to-Market Road 149 and 3,500 feet north of the intersection of Farm-to-Market Road 149 and Spring Cypress Road at 23238 State Highway 249, Tomball in Harris County, Texas 77375.

THE CARDON GROUP LLC has applied for a renewal of TPDES Permit No. WQ0014991001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility will be located approximately 4,000 feet south and 1,500 feet west of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas 77583.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed TPDES Permit No. WQ0015079001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility will be located 1,500 feet south of the intersection of north Farm-to-Market Road 81 and State Highway 123 in Karnes County, Texas 78118.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF MOUNT CALM has applied for a minor amendment to the Permit No. WQ0011464001 to authorize the addition of a new chlorination disinfection system to the treatment facilities. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The facility is located southeast of the City of Mount Calm, south of Farm-to-Market Road 339, approximately one mile east of the intersection of State Highway 31 and Farm-to-Market Road 339 in Hill County, Texas 76673.

TRD-201302275
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 5, 2013

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Notice of Water Rights Applications

Notice issued June 4, 2013.

APPLICATION NO. 18-3862A. The City of Victoria, 105 W. Juan Linn, Victoria, Texas 77901, seeks to amend its portion of Certificate of Adjudication No. 18-3862 to add uses; change the place of use; authorize an exempt interbasin transfer; change the diversion point to a point on the Guadalupe River, Guadalupe River Basin; and to allow storage of the authorized water in the off-channel reservoirs that are authorized by Water Use Permit No. 5466. Applicant also requests authorization to make diversions not currently authorized due to streamflow restrictions, and replace that water diverted with groundwater. More information on the application and how to participate in the permitting process is given below. The application was received on June 22, 2009. Additional information and fees were received on February 22, March 11, March 12, April 1, June 14, December 1, and December 29, 2010, April 13, and April 27, 2011, February 9, and September 13, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 22, 2012. The Executive Director has completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would include special conditions, including but not limited to streamflow restrictions and monitoring requirements. 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, Bldg. F, Austin, Texas 78753. 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. 3606A. The City of Victoria, 105 W. Juan Linn, Victoria, Texas 77901, seeks to amend its portion of Water Use Permit No. 3606 to add uses; change the place of use; request an exempt interbasin transfer; change the diversion point to a point on the Guadalupe River, Guadalupe River Basin; and to allow storage of the authorized water in the off-channel reservoirs that are authorized by Water Use Permit No. 5466. Applicant also requests authorization to make diversions not currently authorized due to streamflow restrictions, and replace that water diverted with groundwater. More information on the application and how to participate in the permitting process is given below. The application was received on June 22, 2009. Additional information and fees were received on February 22, March 11, March 12, April 1, June 14, December 1, and December 29, 2010, April 13, and April 27, 2011, February 9, and September 13, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 22, 2012. The Executive Director has completed the technical review of the application and prepared a draft amendment. The amendment, if granted, would include special conditions, including but not limited to streamflow restrictions and monitoring requirements. 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, Bldg. F, Austin, Texas 78753. 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.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201302276
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 5, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 14, through May 17, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on June 5, 2013. The public comment period for this project will close at 5:00 p.m. on July 5, 2013.

FEDERAL AGENCY ACTIONS:

Federal Agency: USACE-Galveston District; Galveston District Permit Setbacks along the Gulf Intracoastal Waterway; Draft Policy Memorandum: The Galveston District is seeking public input on proposed changes to its permit setback policy along the Gulf Coast Intracoastal Waterway to specifically addresses the oversight of construction of structures and/or fill permits along the GIWW to increase safety and preserve the ability to maintain the waterway. A setback is the distance that a structure must be "set back" from the edge of the channel to ensure there are no encroachments in the navigable channel to support safe transportation and maintain sufficient clearance for dredging the channel. Setbacks are represented visually on Google Earth and may be downloaded. The District established an interagency-team comprised of state and federal agency partners as well as commercial users of the GIWW to develop the proposed setback policy. Members of the team included the Corps' Area Offices and Regulatory Branch, U.S. Coast Guard, Texas Department of Transportation, Texas General Land Office, Gulf Intracoastal Canal Association, and numerous towing vessel operators.

CMP Project No.: 13-1162-F2

Federal Agency: USACE-Galveston District; Galveston District Stream Condition Assessment: The purpose of this notice is to provide a set of Standard Operation Procedures (SOP) and requirements for addressing stream restoration and mitigation in the Galveston District. This SOP will only be applicable when direct impacts occur within the stream bed of a water of the United States. While the intent of the SOP is to assess the current functional condition of a stream and determine the appropriate functional credits to offset for any unavoidable loss, the SOP is not intended to take the place of project specific review which may result in adjustments to compensation requirements. Aquatic resources evaluated under this SOP shall be delineated in accordance with Regulatory Guidance Letter 05-05 - Ordinary High Water Mark Identification and wetlands present in the stream and/or riparian buffer shall be delineated in accordance with 1987 Corps of Engineers Wetland Delineation Manual and any appropriate Regional supplement. Applicants should defer to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources, for guidance on mitigation requirements not specifically addressed in this SOP. This SOP should only be used after a permit applicant has first avoided and minimized project impacts and the district engineer determines compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions associated with the stream bed. Additional information can be found at http://goo.gl/33GCT.

CMP Project No.: 13-1163-F2

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201302286
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: June 5, 2013

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Texas Health and Human Services Commission

Correction of Public Notice

The Texas Health and Human Services Commission published a public notice in the May 31, 2013, issue of the *Texas Register* (38 TexReg 3437) regarding the intent to submit a request for an amendment to the Community Living Assistance and Support Services (CLASS) Medicaid waiver, which is a waiver program under the authority of §1915(c) of the Social Security Act. The Community Living Assistance and Sup-

port Services waiver program is currently approved for the five-year period beginning September 1, 2009 and ending August 31, 2014.

The Community Living Assistance and Support Services waiver provides services and support to individuals living in their own or their families' homes, and who meet the requirements for admission to an intermediate care facility for individuals with intellectual disabilities. Individuals also must meet financial eligibility requirements. Services include case management, prevocational services, habilitation, respite, supported employment, adaptive aids and medical supplies, dental services, occupational therapy, physical therapy, prescriptions, nursing services, speech, hearing, and language services, financial management services, support consultation, behavioral support, continued family services, minor home modifications, specialized therapies, support family services and transition assistance services.

In addition to the changes previously described in the public notice published in the May 31, 2013, issue of the *Texas Register,* employment assistance is also being added to the waiver as a service. Changes in the waiver will include the addition of the consumer directed services option for supported employment and a revision to the service definition of supported employment to clarify assistance available and specify integrated, competitive employment. Employment assistance is also being added to the waiver as a service. Point-in-time limits will be added based on the number of individuals that can be served in the waiver at a specific point in time. Service limits implemented December 1, 2011 will be removed.

The Texas Health and Human Services Commission requests this waiver amendment be approved for the period beginning September 1, 2013 through August 31, 2014. This amendment maintains cost savings for waiver years 2013 through 2014.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, phone (512) 462-6293, fax (512) 730-7472 or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201302222
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: May 31, 2013

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements, and directs more funding to hospitals that serve large numbers of uninsured patients.

HHSC is requesting an amendment to the THTQIP that would allow it to use either room under the overall waiver budget neutrality cap or unspent Delivery System Reform Incentive Payment (DSRIP) funds from Demonstration Year (DY) 2 or later waiver years, to count as a "credit" toward Upper Payment Limit (UPL) expenditures made during two months in late 2011. Currently, funds from the Uncompensated Care (UC) pool will need to be credited against these UPL expenditures at some point during the waiver. It appears that Texas providers will have more uncompensated care costs than the UC pool allows and it is likely that not all DSRIP pool dollars will be used. Additionally, waiver expenditures may remain below the overall budget neutrality cap. Given these possibilities, HHSC seeks the flexibility to use either cap room or unspent DSRIP funds to offset the UPL expenditures rather than UC pool funds.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201302266
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 4, 2013

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

HHSC is requesting an amendment to the THTQIP that would allow it to use a small portion of Delivery System Reform Incentive Payment (DSRIP) intergovernmental transfer (IGT) funds (up to one percent or $10,000,000 per demonstration year) to use as 50/50 match to help monitor the DSRIP program. HHSC understands that these funds would be moved into an administrative pool and CMS and HHSC would agree to an administrative protocol on the use of these funds.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201302267

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 4, 2013

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Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Texas Healthcare Transformation and Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The THTQIP waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is September 1, 2013.

The THTQIP serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements, and directs more funding to hospitals that serve large numbers of uninsured patients.

HHSC is requesting an amendment to the THTQIP that would allow it to carry forward unallocated Demonstration Year (DY) 2 Delivery System Reform Incentive Payment (DSRIP) funds into DY3-5 to fund state priority initiatives. Based on the initial RHP plans submitted to CMS, there are approximately $232 million unspent DY2 DSRIP funds, but this may grow as project valuations are finalized with CMS. The state would seek federal approval for the specific priority state initiatives, which may include but are not limited to behavioral healthcare, primary care, interconception care, adult immunizations, tobacco cessation, and workforce issues.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 13247, mail code H-370, Austin, Texas 78711-3427, phone (512) 462-6293, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201302268
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 4, 2013

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Texas Department of Insurance

Company Licensing

Application to change the name of PRESIDENTIAL LIFE INSURANCE COMPANY to ATHENE ANNUITY & LIFE ASSURANCE COMPANY OF NEW YORK, a life, accident and/or health company. The home office is in Dallas, Texas.

Application to do business in the State of Texas by WHITE PINE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Southfield, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201302279
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 5, 2013

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Texas Lottery Commission

Instant Game Number 1553 "Cash Extravaganza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1553 is "CASH EXTRAVAGANZA". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1553 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1553.

A. Display Printing - That area of the instant game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000, $100,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and STACK OF CASH SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1553 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUN
$1,000	ONE THOU
$100,000	100 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX

37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
STACK OF CASH SYMBOL	WIN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

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 (1553), a seven (7) digit Pack number and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1553-0000001-001.

K. Pack - A Pack of "CASH EXTRAVAGANZA" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH EXTRAVAGANZA" Instant Game No. 1553 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 "CASH EXTRAVAGANZA" Instant Game is determined once the latex on the Ticket is scratched off to expose 57 (fifty-seven) Play Symbols. GAME 1: If a player matches any of YOUR PRIZE AMOUNTS Play Symbols to any of the LUCKY PRIZE AMOUNTS Play Symbols, the player wins that amount. GAME 2: If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "Stack of Cash" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. GAMES 3 - 5: If a player reveals 2 matching prize amounts Play Symbols in the same GAME, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 57 (fifty-seven) 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 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 57 (fifty-seven) 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 within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirty six (36) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least once in either GAME 1 or GAME 2, except on Tickets winning thirty six (36) times.

E. GAME 1: A Ticket can win up to twenty one (21) times in this play area.

F. GAME 1: This Ticket consists of twenty one (21) YOUR PRIZE AMOUNTS Play Symbols and three (3) LUCKY PRIZE AMOUNTS Play Symbols.

G. GAME 1: On winning Tickets, a non-winning YOUR PRIZE AMOUNT Play Symbol will not match a winning YOUR PRIZE AMOUNT Play Symbol.

H. GAME 1: On winning and Non-Winning Tickets, non-winning YOUR PRIZE AMOUNTS Play Symbols can appear up to four (4) times with the following parameters:

Maximum of four (4) triples (three identical prizes)

Maximum of four (4) quadruples (four identical prizes)

I. GAME 1: All LUCKY PRIZE AMOUNTS Play Symbols on a Ticket will be different from each other.

J. GAME 1: On Non-Winning Tickets, a LUCKY PRIZE AMOUNT Play Symbol will never match a YOUR PRIZE AMOUNT Play Symbol.

K. GAME 2: A Ticket can win up to twelve (12) times in this play area.

L. GAME 2: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

M. GAME 2: On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

N. GAME 2: This Ticket consists of twelve (12) YOUR NUMBERS Play Symbols, twelve (12) Prize Symbols and three (3) WINNING NUMBERS Play Symbols.

O. GAME 2: All WINNING NUMBERS Play Symbols on a Ticket will be different from each other.

P. GAME 2: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

Q. GAME 2: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

R. GAME 2: On Non-Winning Tickets, a WINNING NUMBER Play Symbol will never match a YOUR NUMBER Play Symbol.

S. GAME 2: The STACK OF CASH Play Symbol will never appear as a WINNING NUMBER Play Symbol.

T. GAME 2: The STACK OF CASH Play Symbol will never appear on Non-Winning Tickets.

U. GAME 2: The STACK OF CASH Play Symbol will appear no more than two (2) times on a Ticket and all wins with the STACK OF CASH Play Symbol will appear only as per the prize structure.

V. GAMES 3, 4 and 5: Players can win one (1) time in each of the three (3) play areas.

W. GAMES 3, 4 and 5: Each of the three (3) play areas will consist of two (2) Prize Symbols.

X. GAMES 3, 4 and 5: On Non-Winning Tickets, Prize Symbols will not appear more than two (2) times across all GAMES.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH EXTRAVAGANZA" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250 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, upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH EXTRAVAGANZA" Instant Game prize of $1,000 or $100,000, 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 "CASH EXTRAVAGANZA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in 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 under $600 from the "CASH EXTRAVAGANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASH EXTRAVAGANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,200,000 Tickets in the Instant Game No. 1553. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1553 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	848,000	8.49
$10	672,000	10.71
$15	176,000	40.91
$20	64,000	112.50
$50	73,920	97.40
$100	27,300	263.74
$250	3,300	2,181.82
$500	2,520	2,857.14
$1,000	190	37,894.74
$100,000	9	800,000.00

*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 3.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1553 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1553, 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-201302227
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 31, 2013

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Panhandle Regional Planning Commission

Notice of Consultant Contract Award

The Panhandle Regional Planning Commission publishes this notice of consultant/professional services contract award. The Request for Proposals appeared in the March 15, 2013, and March 22, 2013, issues of the *Texas Register* (38 TexReg 1924 and 38 TexReg 2056). The selected organization will provide fiscal and program monitoring of the functions performed by the Workforce Solutions Panhandle contractor. Monitoring services to be provided are to ensure that the programs, functions and activities supported by the Texas Workforce Commission funds are in compliance with applicable federal and/or state requirements; that programs achieve intended results; and that resources are efficiently and effectively used for authorized purposes and protected from waste, fraud, and abuse.

The organization selected for this purpose is Ed Tay, Inc. dba E. Taylor and Associates, P.O. Box 940, Del Valle, Texas 78617. The total value of the contract is not to exceed $68,500.

This contract will commence on June 5, 2013 and will terminate on September 30, 2014. The contract may be extended for one additional year based on acceptable performance by the contractor.

TRD-201302287
Leslie Hardin
Workforce Development Program Coordinator
Panhandle Regional Planning Commission
Filed: June 5, 2013

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Public Utility Commission of Texas

Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices Application Form

Notice is given to the public of an application filed on June 3, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission-prescribed application for a permit to operate automatic dial announcing devices (ADAD).

Docket Style and Number: Application of Neighborhood Assistance Corporation of America for a Waiver to the Federal Registration Number Requirement of the Automatic Dial Announcing Devices Application Form, Docket Number 41551.

The Application: Neighborhood Assistance Corporation of America (NACA) filed a request for a waiver of the registration number requirement, in the commission-prescribed application for a permit to operate ADAD. Specifically, Question 11(e) of the application requires the

Federal Registration Number issued to the ADAD manufacturer or programmer either by the Federal Communications Commission or Administrative Council Terminal Attachments. NACA stated that it uses a web-based platform with calls made over a Voice over Internet Protocol platform.

Persons wishing to comment on the action sought or intervene should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 41551.

TRD-201302282
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 5, 2013

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 23, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Nortex Communications to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 41519.

The Application: Nortex Communications (Nortex) filed an application with the commission for revisions to its local exchange service tariffs. Nortex proposed an effective date of July 1, 2013. The estimated revenue increase to be recognized by Nortex is $75,882 in gross annual intrastate revenues. The applicant has 3,446 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 17, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 17, 2013. Requests to intervene should be filed with the commission's Filing Clerk by July 17, 2013, at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41519.

TRD-201302228
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 24, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of West Texas Rural Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to Public Utility Regulatory Act §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41526.

The Application: West Texas Rural Telephone Cooperative, Inc. (West Texas Rural) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to West Texas Rural. The petition requests that the commission allow West Texas Rural recovery of funds from the TUSF in the amount of $173,069 to replace projected 2012 FUSF revenue reductions. West Texas Rural is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 comments should reference Docket Number 41526.

TRD-201302229
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 28, 2013, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Alenco Communications, Inc. d/b/a ACI to Recover Funds From the Texas Universal Service Fund Pursuant to Public Utility Regulatory Act §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41529.

The Application: Alenco Communications, Inc. d/b/a ACI (ACI) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to ACI. The petition requests that the commission allow ACI recovery of funds from the TUSF in the amount of $146,049 to replace projected 2012 FUSF revenue reductions. ACI is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. 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 comments should reference Docket Number 41529.

TRD-201302230
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2013

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Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 31, 2013 for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of XIT Rural Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to PURA §56.025 and P.U.C. Substantive Rule §26.406. Docket Number 41550.

The Application: XIT Rural Telephone Cooperative, Inc. (XIT Rural) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to XIT Rural. The petition requests that the commission allow XIT Rural recovery of funds from the TUSF in the amount of $64,246 to replace projected 2012 FUSF revenue reductions. XIT Rural is not seeking any additional rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the commission 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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 41550.

TRD-201302281
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 5, 2013

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South East Texas Regional Planning Commission

Request for Proposals for 9-1-1 Electrician Services

GENERAL: The 9-1-1 Emergency Network, a Division of the South East Texas Regional Planning Commission (SETRPC), is interested in purchasing Licensed/Bonded Electrician services for September 1, 2013 through August 31, 2015.

INVITATION FOR BID: The competitive Request for Proposal (RFP) will be available at the 9-1-1 Emergency Network office located at 2210 Eastex Freeway, Beaumont, Texas 77703 or the SETRPC website (www.setrpc.org) after 10 a.m. on June 7, 2013. Except for holidays, the 9-1-1 Emergency Network office is open 8 to 12 a.m. and 1:00 to 5:00 p.m. Monday through Friday. Copies of the RFP are available in Microsoft Office "Word" format at the above website. Once the website is displayed, navigate your cursor to the left "Main Menu" column, click on "RFP", under "Request for Proposal" click on "9-1-1 Electrician Services RFP" and download the "Word" document. All bids are due on or before 10 a.m. Wednesday July 31, 2013 (late bids will not be accepted).

BID OPENING: Bid opening will be at 10:00 a.m., Thursday August 1, 2013, at the SETRPC office at 2210 Eastex Freeway, Beaumont, Texas. The 9-1-1 Emergency Network reserves the right to reject any or all bids and does not bind itself to accept the lowest bid for the Electrical Services or any part thereof, and shall have the right to ask for new bids for the whole or parts.

TRD-201302271
Pete De La Cruz
Director of 9-1-1 Emergency Network
South East Texas Regional Planning Commission
Filed: June 4, 2013

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Texas Department of Transportation

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

Orange County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualification statements for professional aviation engineering design services described below:

Airport Sponsor: Orange County. TxDOT CSJ No. 13HGORANG. Scope: Provide engineering/design services to construct hangar access taxiway and 80 foot x 80 foot box hangar.

The DBE goal is set at 8 percent. TxDOT Project Manager is Ed Mayle.

To assist in your qualification preparation the criteria, 5010 drawing, project diagram and most recent Airport Layout Plan are available online at:

http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Orange County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

http://www.txdot.gov/inside-txdot/division/aviation/projects.html

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 9, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The commit-

tee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at:

http://www.txdot.gov/inside-txdot/division/aviation/projects.html

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, at 1-800-68-PILOT at extension 4517. For technical questions, please contact Ed Mayle at 1-800-68-PILOT at extension 4528.

TRD-201302285
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 5, 2013

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Aviation Division - Request for Qualifications for Professional Services

The City of Sugar Land, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Sugar Land, Sugar Land Regional Airport. TxDOT CSJ No. 1312SRLND. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36A latest edition. The assessment will include but is not limited to an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Sophia Bradford.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at:

http://www.txdot.gov/inside-txdot/division/aviation/projects.html

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 16, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at:

http://www.txdot.gov/inside-txdot/division/aviation/projects.html

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sophia Bradford, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201302284
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 5, 2013

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Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (department) publishes this notice of a consultant contract award for providing the department services for a Management and Organizational Review. The request for proposal was published in the February 15, 2013, issue of the *Texas Register* (38 TexReg 1059).

The consultant will provide advice, assistance, and support related to the department's management of an enterprise resource planning (ERP) system integration project including: risk identification and mitigation; quality assurance; identification, management, and execution of organizational change management services; strategic public relations services; and direct support to the ERP program manager and staff. The work will involve (1) identifying risks related to the project, their specific sources and applicable mitigation methods; (2) providing a report or presentation regarding risk including, among other things, a strategy analysis addressing key risks; (3) providing project quality assurance (QA) including the developing, documenting, presenting, and adjusting project performance matrix, measures, and measurement methodology; (4) communicating and escalating QA issues; (5) managing organizational change by identifying key change areas, providing the best strategy and an action plan to address specific situations, and monitoring change during the process; and (6) providing public relations, both external and internal, by managing project image, communicating project strategy message, and providing target communications.

The selected consultants for these services are the Boston Consulting Group, (BCG), One Beacon Street, 10th Floor, Boston, Massachusetts 02108, and Grant Thornton, LLP, 112 East Pecan Street, Suite 2800, San Antonio, Texas 78205. The total value of both contracts is

$7,490,674.00. The contract work period started on May 21, 2013, and will continue until March 31, 2015.

TRD-201302274
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 5, 2013

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Workforce Solutions Capital Area

Request for Qualifications for Independent Financial Auditing Services

The Workforce Solutions Capital Area Workforce Board ("Board" or "WFSCA") is soliciting proposals from qualified individuals or firms to provide independent financial auditing services.

This Request for Qualifications (RFQ) is issued at 1:00 p.m., on Thursday, June 6, 2013, by Workforce Solutions Capital Area Workforce Board. The RFQ may be obtained by contacting Jerry W. Neef by email at jerry.neef@wfscapitalarea.com. The RFQ will be mailed or sent electronically as requested by the interested party. The RFQ may also be picked up in person at the offices of WFSCA located at 6505 Airport Blvd., Suite 101E, Austin, Texas 78752, during normal business hours from 8:00 a.m. - 5:00 p.m., Monday through Friday (except for holidays). The RFQ may also be downloaded from www.wfscapitalarea.com.

Interested parties must submit a Letter of Intent to Bid (Attachment J). The Letter of Intent to Bid must be submitted and received by Workforce Solutions Capital Area by 12:00 p.m., June 13, 2013. Proposals will not be accepted from proposers who did not submit the Letter of Intent to Bid by the established deadline. The Letter of Intent to Bid may be submitted by email, facsimile, or by mail/carrier to the following:

Audit Services RFQ

Workforce Solutions Capital Area

6505 Airport Blvd., Suite 101E

Austin, Texas 78752

Email: jerry.neef@wfscapitalarea.com

Fax: (512) 719-4710

The proposer is solely responsible for the timely delivery of the Letter of Intent to Bid. Workforce Solutions is not responsible for any failures, errors or omission or otherwise on the part of the U.S. Postal Service or other carrier. Disputes concerning late or non-received letters cannot be appealed.

The response deadline is no later than 12:00 (noon) on July 5, 2013. Proposals, whether mailed or personally delivered, must be officially received at 6505 Airport Blvd., Suite 101-E, Austin, Texas 78752. An original signed proposal and four (4) exact copies must be received by the required date and time. Official receipt of proposals will be recorded and a receipt form issued by WFSCA. Proposers who mail a response will be sent a copy of the receipt form.

Faxed or electronic copies of proposals will not be accepted. Late proposals will be disqualified regardless of circumstance. The timely delivery of response is the sole responsibility of the proposer.

TRD-201302265
Alan D. Miller
Executive Director
Workforce Solutions Capital Area
Filed: June 4, 2013

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Request for Qualifications for Legal Services

The Workforce Solutions Capital Area Workforce Board ("Board" or "WFSCA") is soliciting proposals from qualified individuals or firms to provide professional legal services.

This Request for Qualifications (RFQ) is issued at 10:00 a.m. on Wednesday, June 5, 2013, by Workforce Solutions Capital Area Workforce Board. The RFQ may be obtained by contacting Alan Miller by email at alan.miller@wfscapitalarea.com. The RFQ will be mailed or sent electronically as requested by the interested party. The RFQ may also be picked up in person at the offices of WFSCA located at 6505 Airport Blvd., Suite 101E, Austin, Texas 78752, during normal business hours from 8:00 a.m. - 5:00 p.m., Monday through Friday (except for holidays). The RFQ may also be downloaded from www.wfscapitalarea.com.

Interested parties must submit a Letter of Intent to Bid (Attachment G). The Letter of Intent to Bid must be submitted and received by Workforce Solutions Capital Area by 12:00 p.m., June 13, 2013. Proposals will not be accepted from proposers who did not submit the Letter of Intent to Bid by the established deadline. The Letter of Intent to Bid may be submitted by email, facsimile, or by mail/carrier to the following:

Legal Services RFQ

Workforce Solutions Capital Area

6505 Airport Blvd., Suite 101E

Austin, Texas 78752

Email: alan.miller@wfscapitalarea.com

Fax: (512) 719-4710

The proposer is solely responsible for the timely delivery of the Letter of Intent to Bid. Workforce Solutions is not responsible for any failures, errors or omission or otherwise on the part of the U.S. Postal Service or other carrier. Disputes concerning late or non-received letters cannot be appealed.

The response deadline is no later than 12:00 (noon) on July 8, 2013. Proposals, whether mailed or personally delivered, must be officially received at 6505 Airport Blvd., Suite 101-E, Austin, Texas 78752. An original signed proposal and four (4) exact copies must be received by the required date and time. Official receipt of proposals will be recorded and a receipt form issued by WFSCA. Proposers who mail a response will be sent a copy of the receipt form.

Faxed or electronic copies of proposals will not be accepted. Late proposals will be disqualified regardless of circumstance. The timely delivery of response is the sole responsibility of the proposer.

TRD-201302254
Alan D. Miller
Executive Director
Workforce Solutions Capital Area
Filed: June 3, 2013

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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)*