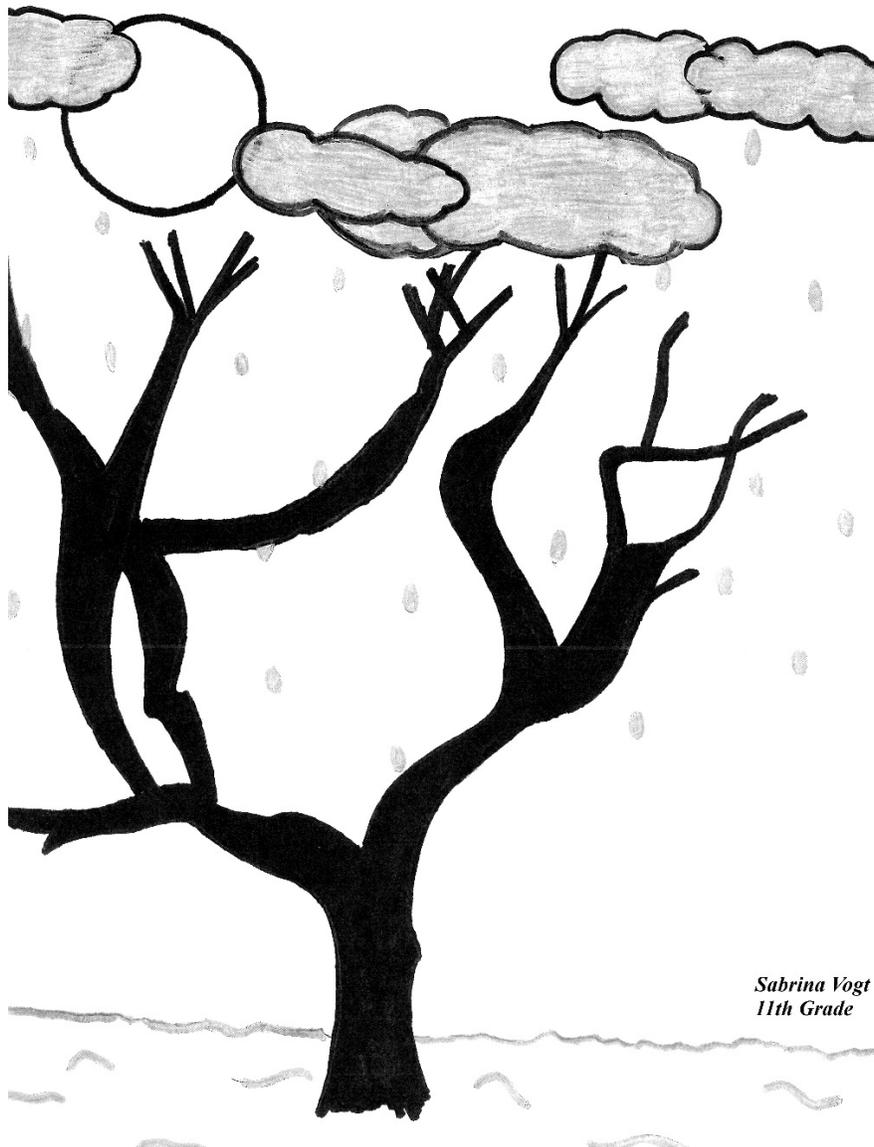

TEXAS REGISTER

Volume 41 Number 7

February 12, 2016

Pages 1035 - 1174



*Sabrina Vogt
11th Grade*

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.

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THE GOVERNOR

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

Appointments

Appointments for January 7, 2016

Appointed to the Prepaid Higher Education Tuition Board for a term to expire February 1, 2021, Michael J. Truncala of Beaumont (replacing Stephen Nations Mueller of Cypress whose term expired).

Appointments for January 11, 2016

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Michael H. "Mike" Morath of Dallas (replacing Michael L. Williams of Arlington).

Appointed to the Interstate Compact on Educational Opportunity for Military Children for a term at the pleasure of the Governor, Michael H. "Mike" Morath of Dallas (replacing Michael L. Williams of Arlington).

Appointed to the OneStar National Service Commission for a term to expire March 15, 2016, Michael H. "Mike" Morath of Dallas (replacing Michael L. Williams of Arlington).

Appointments for January 13, 2016

Designating Andrew B. Kim of New Braunfels as presiding officer of the Texas Commission on Next Generation Assessments and Accountability for a term at the pleasure of the Governor. Mr. Kim is replacing Michael H. "Mike" Morath of Dallas as presiding officer.

Appointed to the Texas Commission on Next Generation Assessments and Accountability for a term at the pleasure of the Governor, Stacy A. Hock of Austin (replacing Michael H. "Mike" Morath of Dallas who resigned).

Appointments for January 15, 2016

Appointed to the Texas State Council for Interstate Adult Offender Supervision for a term to expire February 1, 2017, David G. Gutierrez of Belton (replacing Rissie Louise Owens of Huntsville who resigned).

Appointed to the Texas State Council for Interstate Adult Offender Supervision for a term to expire February 1, 2019, Elizabeth "Libby" Elliott of Austin (replacing Steven M. "Steve" Robinson of Liberty Hill who resigned). Ms. Elliott will serve as presiding officer of the council for a term at the pleasure of the Governor.

Appointed to the Department of Information Resources for a term to expire February 1, 2019, Linda I. Shaunessy of Austin (replacing Cynthia "Cindy" Villa of El Paso who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2021, Stuart A. Bernstein of Austin (replacing Robert E. Pickering, Jr. of Houston whose term expired).

Appointed to the Department of Information Resources for a term to expire February 1, 2021, John B. Scott of Fort Worth (replacing Richard S. Moore of Goliad whose term expired).

Appointed to the Department of Information Resources for a term to expire February 1, 2021, Rigoberto "Rigo" Villarreal of Mission (replacing Arthur C. Troilo, III of Lakeway whose term expired).

Designating John B. Scott of Fort Worth as presiding officer of the Department of Information Resources for a term at the pleasure of the Governor. Mr. Scott is replacing Charles E. Bacarisse of Houston as presiding officer.

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2021, Corbett "Chase" Bearden of Austin (Mr. Bearden is being reappointed).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2021, Jennifer N. Walker of Lampasas (replacing Alfred Vidaurri, Jr. of Aledo whose term expired).

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2021, Robert S. "Bob" Wetmore of Austin (replacing H.L. Bert Mijares, Jr. of El Paso whose term expired).

Designating Debra J. Dockery of San Antonio as presiding officer of the Texas Board of Architectural Examiners for a term at the pleasure of the Governor. Ms. Dockery is replacing Alfred Vidaurri, Jr. of Aledo as presiding officer.

Pursuant to HB 26, 84th Legislature, Regular Session, appointing to the Economic Incentive Oversight Board, for a term at the pleasure of the Governor, Adriana R. Cruz of San Marcos.

Pursuant to HB 26, 84th Legislature, Regular Session, appointing to the Economic Incentive Oversight Board, for a term at the pleasure of the Governor, Trevor L. Pearlman of Dallas.

Pursuant to HB 26, 84th Legislature, Regular Session, appointing to the Economic Incentive Oversight Board, for a term at the pleasure of the Governor, Macedonio "Massey" Villarreal of Sugar Land.

Appointments for January 25, 2016

Designating Macedonio "Massey" Villarreal of Sugar Land as presiding officer of the Economic Incentive Oversight Board for a term at the pleasure of the Governor.

Appointments for January 28, 2016

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Sharon Denny of McKinney.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Amy L. Gowder of San Antonio.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Catherine H. "Cathy" Kilmain of North Richland Hills.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Jonathan "J. Ross" Lacy of Midland.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Robert D. "Bob" Mitchell of Pearland.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2017, Terry W. Stevens of Waco.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2019, John Elbon of Seabrook.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2019, Robert E. "Robby" Harless, II of Southlake.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2019, Janine K. Iannarelli of Houston. Ms. Iannarelli will serve as presiding officer of the committee.

Pursuant to SB 458, 84th Legislature, Regular Session, appointing to the Aerospace and Aviation Advisory Committee for a term to expire September 1, 2019, Gilberto Salinas of Brownsville.

Greg Abbott, Governor

TRD-201600372



Proclamation 41-3474

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather, tornado and flooding event that occurred between October 22, 2015, and October 31, 2015, has caused a disaster in Cameron County.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Cameron County.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of January, 2016.

Greg Abbott, Governor

TRD-201600373



Proclamation 41-3475

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, issued an Emergency Disaster Proclamation on December 27, 2015, certifying that the severe winter weather and tornadic events that began on December 26, 2015, has caused a disaster in Collin, Dallas, Ellis and Rockwall counties in the State of Texas. On December 31, 2015, I amended my proclamation of December 27, 2015, to include Wichita County. Those same conditions continue to exist in these and other counties in Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Bailey, Castro, Childress, Cochran, Collin, Dallas, Deaf Smith, Dickens, Ellis, Franklin, Hall, Hardeman, Harrison, Henderson, Hockley, Hopkins, Kaufman, Kent, King, Lamb, Liberty, Lubbock, Navarro, Parmer, Rains, Red River, Rockwall, Terry, Titus, Van Zandt and Wichita counties in the state of Texas.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of January, 2016.

Greg Abbott, Governor

TRD-201600374



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-0092-KP

Requestors:

The Honorable Charles Schwertner

Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Todd Hunter

Chair, Committee on Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The status of Insurance Code article 21.52B, subsection 2(2), the Any Willing Pharmacy Statute, in light of federal court decisions (RQ-0092-KP)

Briefs requested by February 26, 2016

RQ-0093-KP

Requestor:

Ms. Brandy Lee

Upshur County Auditor

Post Office Box 730

Gilmer, Texas 75644

Re: Whether a county may participate in non-profit organization's flag project (RQ-0093-KP)

Briefs requested by February 26, 2016

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

TRD-201600507

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: February 2, 2016



Opinions

Opinion No. KP-0060

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Questions regarding the continuation of longevity pay after a county employee is elected to a county office (RQ-0042-KP)

S U M M A R Y

A commissioners court order granting longevity pay to certain qualified employees and allowing employees to transfer the longevity pay to another county department if they are hired there does not continue in effect for an individual who later becomes a county officer.

A county officer who does not challenge the officer's proposed salary in accordance with the procedure and deadline specified by subsection 152.016(a) of the Local Government Code in any given year has effectively waived any salary grievance for the upcoming fiscal year.

Opinion No. KP-0061

The Honorable Logan Pickett

Liberty County District Attorney

1923 Sam Houston, Suite 112

Liberty, Texas 77575

Re: Majority vote requirement to remove a municipal officer under section 22.077 of the Local Government Code and related questions (RQ-0043-KP)

S U M M A R Y

Subsection 22.077(a) of the Local Government Code authorizes a Type A general-law municipality to remove a municipal officer for incompetency, corruption, misconduct, or malfeasance at a regular meeting by a majority vote of those present and voting.

Subsection 22.077(b) of the Local Government Code authorizes a Type A general-law municipality to remove a municipal officer for a lack of confidence if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence.

For purposes of Local Government Code section 22.039, a "called meeting" of a Type A general-law municipality is a meeting called and held at a time or place other than the regular meeting time and place

adopted pursuant to subsection 22.038(a). An emergency meeting will be considered a called meeting for purposes of section 22.039 if it is held at a time or place other than the regular meeting time and place established by a resolution adopted pursuant to section 22.038.

Two-thirds of a municipality's aldermen constitute a quorum for purposes of convening a called emergency meeting of a Type A general-law municipality.

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

TRD-201600538
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 3, 2016



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-534. Whether an employee of a state agency may accept from persons regulated by the agency subscription fees for operating a website that compiles publicly available information. (AOR-606)

SUMMARY

An employee of a state regulatory agency should not accept from a person regulated by the agency a payment in the form of a subscription fee to operate a website as described in this opinion.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

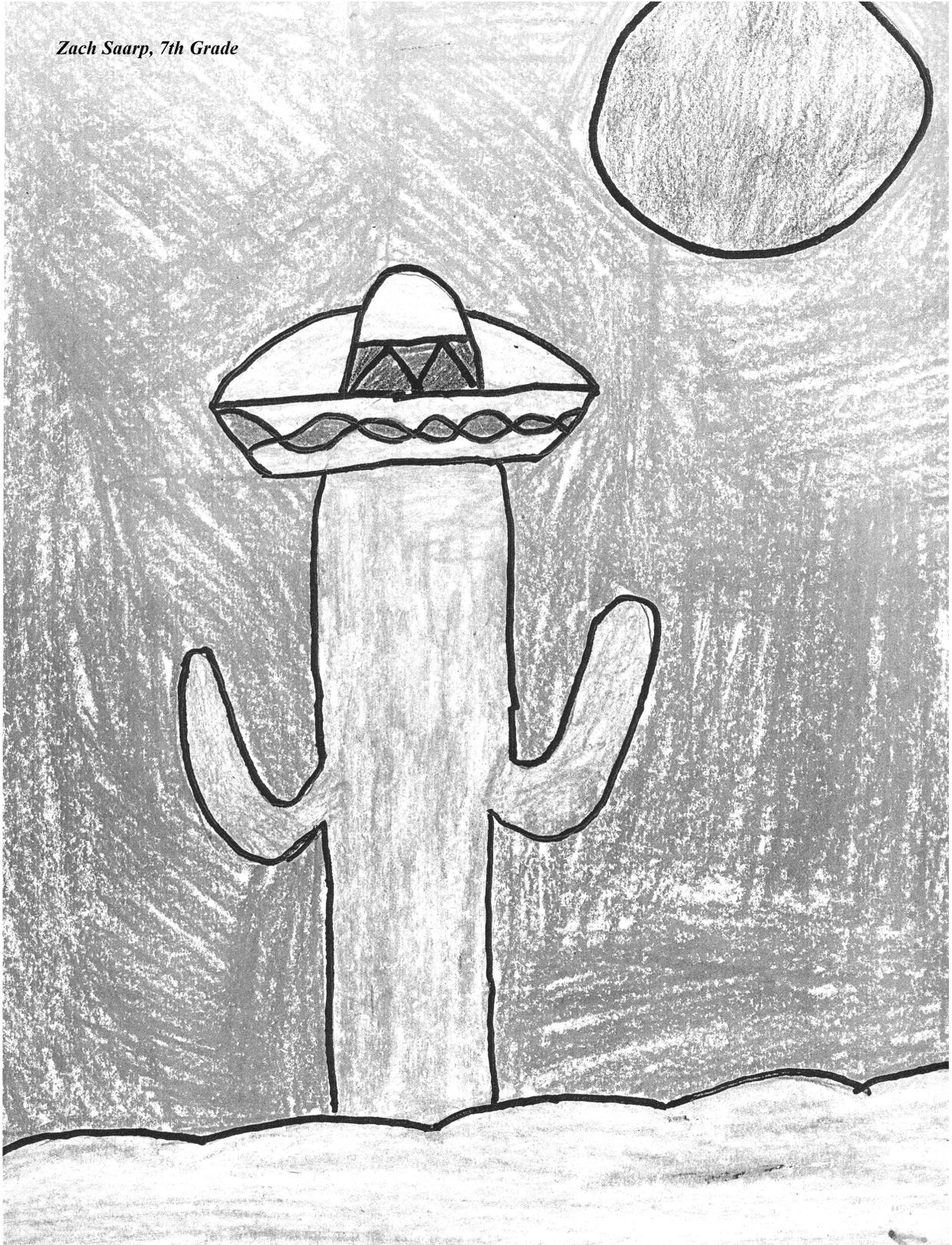
Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201600530
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: February 3, 2016



Zach Saarp, 7th Grade



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department) adopts on an emergency basis new Subchapter U, §§19.400 - 19.408, to establish an emergency quarantine to contain the recently discovered infestation of a strain of citrus canker in the Rancho Viejo area near Brownsville, Texas. The term "citrus canker" is historically referred to as a plant disease with a group of strains or pathotypes of the bacterium *Xanthomonas axonopodis* pv. *citri*. The most damaging is the Asiatic or A strain, which infects most citrus species and their hybrids, especially grapefruit, sour orange, Mexican or key lime, lemon, tangelo, tangerine, plus *Poncirus trifoliata* and some other non citrus rutaceous hosts. The best available scientific evidence indicates that the unique citrus canker strain was detected on October 16, 2015. Since then, it has been found on young leaves and twigs of Mexican lime in the Rancho Viejo area. It has a restricted host range of limes and lemons. As additional evidence becomes available and more hosts are added, the Department may expand the scope of the quarantine accordingly. The citrus canker strain was experimentally tested for host range by scientists at Texas A&M Kingsville Citrus Center (TAMUK-CC) and it was found to readily infect Mexican lime and Kaffir lime, while Ponderosa lemon, Persian lime and Meyer lemon were observed to show only a few lesions. Mexican lime, Kaffir lime and Ponderosa lemon were found infested on dooryard trees during the survey and sampling. The varieties of grapefruit, sweet orange and sour orange commonly grown in the Rio Grande Valley showed no infection. The studies by TAMUK-CC seem to suggest that this strain is probably not the Asiatic or A strain, but is likely the Wellington or A^w strain that has only previously been recorded in Florida and has a very restricted host range amongst limes and lemons. The current infestation is the first known incidence of citrus canker in Texas after its eradication in 1943.

Citrus canker is harmless to humans and animals. However, the newly detected infestation presents a serious risk to lime and lemon trees in the Lower Rio Grande Valley (LRGV). Texas does not have commercial production of lime or lemon fruit; however, homeowners and nurseries in the LRGV produce lime and lemon trees. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and it can expose the interior of fruit to secondary infection by decay organisms. The dis-

ease does not travel through the tree to become systemic. The marketability of symptomatic fresh fruit is negatively impacted. Lesions on leaves are raised or "pustular" on both leaf surfaces, particularly on the lower surface. Leaf pustules develop a yellow halo with water-soaked margins, becoming corky and crateriform with a raised margin and sunken center. Leaf lesions may appear within 14 days following inoculation and can attain 2-10 mm diameter on a susceptible host. In the field, symptoms may take several months to appear, and lower temperatures may increase the latency of the disease. The rod shaped flagellate citrus canker bacteria can enter young leaves through stomata, wounds on leaves, young twigs or shoots. The damage caused by citrus leaf miner larvae (*Phyllocnistis citrella*) can provide access for infection and canker was found associated with leaf minor damage on Ponderosa lime. Citrus canker bacterium can stay viable in old lesions on leaves, branches and other plant surfaces for several months, including in those dropped on the ground. *X. axonopodis* pv. *citri* can spread by wind, splashing water, movement of infected plant material or mechanical contamination. The pathogen flourishes under warm moist conditions and requires a host to survive in a natural environment.

Lime and lemon nursery and dooryard trees in the area are in peril without the emergency quarantine, which provides necessary steps to prevent the spread of this devastating plant disease and to undertake actions to prevent further spread of the disease. From October 16 - December 1, 2015, 8 samples (5 Mexican lime, 1 kaffir lime and 1 Ponderosa lemon) were confirmed positive for citrus canker and 36 were found negative. Over 3,000 residential properties have been surveyed; commercial grapefruit and orange groves within and beyond the quarantined area showed no symptomatic trees.

The Department believes that establishment of an emergency quarantine is both necessary and appropriate in order to effectively combat and prevent the spread of citrus canker to non-infected areas, including to nurseries, groves and residential areas. A one-half mile radius area will be quarantined around each positive site. All quarantine areas overlap and coalesce into a total 55 square mile contiguous area. There is no commercial citrus in the quarantined area. For practical purposes borders of the quarantined area will be set using the closest property lines, roads, canals or river and posted on the Department's website: www.texasagriculture.gov. The movement, distribution or sale of citrus plants within or out of the quarantined area will be prohibited. Articles or equipment coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for processing must be moved under the conditions of a compliance agreement. Landscapers and mowers servicing the quarantined area must come under compliance agreement with TDA, and decontaminate equipment by steam cleaning or washing prior to moving out of the quarantined area. The Department has recom-

mended and encourages the removal of infected tree and plant material and disposal by burning or bagging and burying at least 2 feet deep at the municipal landfill to manage the disease. The Department urges residents in and visitors to the quarantined area to be aware of the disease and help combat it by contacting the Department, Texas A&M University AgriLife Extension, TAMUK-CC, United States Department of Agriculture, or Texas Citrus Pest and Disease Management Corporation for more information.

New §19.400 defines the quarantined pest. New §19.401 describes the areas subject to quarantine. New §19.402 provides quarantined articles. New §19.403 provides restrictions on the movement of regulated articles. New §19.404 provides ongoing pest management. New §19.405 contains restrictions and requirements related to fruit harvest. New §19.406 provides consequences for failure to comply with quarantine restrictions. New §19.407 provides an appeal process for certain agency actions taken against a person for failure to comply with quarantine restrictions or requirements. New §19.408 provides procedures for handling discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code; and Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

The code affected by the emergency adoption is the Texas Agriculture Code, Chapters 12 and 71.

§19.400. Quarantined Pest.

The quarantined pest is citrus canker, a serious plant disease that is not widely distributed in this state. The disease is caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri*.

§19.401. Quarantined Areas.

Quarantined areas described on the Texas Department of Agriculture's (Department) Citrus Canker Quarantine under this subchapter, and as found at the Department's webpage at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

(1) On the basis of new or revised information, the Department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas.

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the department's webpage on Citrus Canker Quarantine.

§19.402. Quarantined Articles.

Quarantined articles are the quarantined pest, and all plants and plant parts, including fruit and seeds listed in 7 CFR §301.75-3. All soil and potting media associated with, and tools, equipment, appliances, machinery, etc., used for handling infected or contaminated material are quarantined articles.

§19.403. Requirements and Restrictions for Movement of Regulated Articles.

(a) Movement of regulated plants within, into or from the quarantined area for sale, distribution or planting is prohibited.

(b) Regulated fruits must be free of leaves, stems and debris if offered for sale or distribution. Fruit can only move out of the quarantined area for sale, distribution or processing or packing at a packing house under a compliance agreement with the Department or the USDA.

(c) Quarantined articles intended for movement, distribution or sale through or out of the quarantined area or between noncontiguous quarantined areas for intrastate or interstate movement shall conform to the restrictions and requirements of 7 CFR §301.75 Subpart-Citrus Canker, including the corresponding restrictions and requirements that may be described in 7 CFR §301.75 as applying to intrastate or interstate movement, distribution or sale.

(d) Landscapers and mowers servicing the quarantined area must come under compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or washing with an approved disinfectant prior to moving out of the quarantined area.

(e) Infected plants, plant parts or quarantined articles that are completely covered can move out of the quarantined area for burning or burial in the landfill under a compliance agreement or permit issued by the Department.

§19.404. Ongoing Pest Management.

At all times, all the citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department; immediately notify the regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.405. Citrus Fruit Harvest.

(a) Regulated fruit from a quarantined area intended for non-commercial or commercial movement, sale or distribution outside of the quarantined area, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit:

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, according to D301.75-11(a-1) or (a-2) or (a-3) of the USDA Treatment Manual.

(2) Personnel using a treatment prescribed under paragraph (1) of this subsection must clean their hands according to requirements in D301.75-11 of the USDA Treatment Manual.

(3) Sodium hypochlorite, peroxyacetic acid, and sodium 0-phenyl phenate (SOPP) must be applied for disinfecting hands in accordance with label directions.

§19.406. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat or destroy or order to be treated or destroyed, any quarantined article:

(1) that is found to be infested with the quarantined pest; or, regardless of whether infected or not;

(2) that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.407. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.408. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on February 1, 2016.

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Assistant General Counsel

Texas Department of Agriculture

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

31 TAC §65.94

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, a 60-day extension of new §65.94, concerning Chronic

Wasting Disease - Deer Management Permit Provisions, originally adopted on October 5, 2015, and published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305). The new emergency rule is part of Subchapter B, Division 2, Chronic Wasting Disease - Movement of Deer.

Pursuant to Government Code, §2001.034 (the Texas Administrative Procedure Act), emergency rules may initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. In the notice of adoption of the emergency rule, the department stated its intent to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process. The department published interim proposed rule in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086) and those rules were approved for adoption, with changes, by the Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on January 21, 2016, and will be published in a future issue of the *Texas Register*.

The extension of the emergency rule is necessary to enable its effectiveness to continue until the adoption of the interim rules can be filed and take effect, which will take place prior to the expiration of the 60-day extension. The interim rule will replace the emergency rule and the emergency rule will be withdrawn simultaneously upon the effectiveness of the interim rule. Therefore, the entirety of the 60-day extension will not be necessary.

Based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free ranging deer herds, guidance from the Texas Animal Health Commission, and input from stakeholder groups, the department intends to review the interim rule, along with interim rules governing deer breeder permits, and the emergency rule regarding permits to trap, transport and transplant deer (Triple T permits) or trap, transport and process deer (TTP permits), following the close of the deer season and present the results of that review to the Commission in the spring of 2016 for possible modifications.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for breeding purposes. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition to authorizing the temporary possession of free-ranging white-tailed deer for breeding purposes, department regulations authorize the introduction of deer from a deer breeding facility into a DMP facility for breeding purposes. (Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.) A buck deer that is introduced from a deer breeding facility to a DMP facility may be liberated from the DMP facility, returned to the breeding facility from which the buck deer was transferred, or transferred to another deer breeder. All doe deer introduced to a DMP facility, whether by trapping from a free-ranging herd or transfer from a deer breeding facility must be liberated upon release from the DMP facility.

For the reasons explained in this preamble, pursuant to Parks and Wildlife Code §12.027 and Government Code §2001.034, the department's executive director has determined that the presence of chronic wasting disease (CWD) poses an immediate danger to white-tailed and mule deer, which are species authorized to be regulated by the department, and that the

adoption of these rules on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the five years preceding the discovery of CWD in the index facility, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and three Deer Management Permit (DMP) facilities in Texas, as well as two destinations in Mexico). The department estimates that in those five years, more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility. The intent of the emergency rule extended herein is to reduce the probability of CWD being spread from areas where it might exist and to increase the probability of detecting CWD where it does exist. The emergency rule extended herein sets forth provisions governing the transfer of breeder deer to and from DMP facilities. The new rules are part of a broader cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a transmissible spongiform encephalopathy (TSE), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE) in cattle, and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations correlates with deer population declines, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. The implications of CWD for Texas and its multi-billion dollar ranching, hunting, and wildlife management economies could be significant, unless contained and controlled.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January

2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and the Texas Animal Health Commission (TAHC) convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules among other things require deer harvested in a specific geographical area to be presented at check stations to be tested for CWD.

The department adopted emergency rules on August 18, 2015 (40 TexReg 5566), to address deer breeding facilities and release sites for breeder deer, ("emergency CWD breeder rules"), which were extended for an additional 60 days on December 1, 2015 (41 TexReg 9). The department also adopted new rules to replace the emergency CWD breeder rules. Those rules were published for public comment in the October 2, 2015, issue of the *Texas Register*, approved by the (the Commission) at its November 5, 2015, meeting, and will be effective February 2, 2016, and published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815).

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 32,882 "not detected" CWD test results were obtained from free-ranging (i.e., not breeder) deer in Texas. Additionally, deer breeders have submitted 12,759 "not detected" test results to the department. The intent of the new emergency rules is to reduce the probability of CWD being spread to DMP facilities and subsequent DMP release sites and to increase the probability of detecting CWD if it does exist.

The department notes for purposes of clarification that the provisions of the CWD breeder rules apply to the emergency DMP rules adopted in this rulemaking, to the extent applicable. The applicable provisions would include, for example, the definitions in §65.90 and the categories and classes of breeding facilities and release sites.

The emergency rule extended herein therefore sets forth specific provisions that tie the movement of breeder deer for the purposes of DMP activities to the testing requirements imposed by §§65.90 - 65.93 of this title for release sites, which require CWD testing to be performed at the site where DMP deer are to be liberated, depending on the source of the deer detained in a DMP facility. The new emergency rule also imposes a status change for a deer breeding facility that receives a deer from a DMP facility of lower status. The new emergency rule also prohibits the transfer of breeder deer to a Level 3 DMP facility or a Class III release site unless the deer has been tagged with an approved RFID or NUES ear tag.

The emergency action is necessary to protect the state's free-ranging and captive white-tailed deer populations.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code, §2001.034, which authorizes a state agency to adopt such emergency rules without prior

notice or hearing. In addition, Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, authorize the department to regulate the possession of free-ranging white-tailed or mule deer for breeding purposes.

§65.94. Chronic Wasting Disease - Deer Management Permit Provisions.

(a) General Provisions.

(1) A DMP facility is a property (including the pen in which deer are temporarily detained for breeding purposes and the high-fenced acreage to which the deer are released) permitted under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)).

(2) For the purposes of this section, "status" means the level of testing required by this division for any facility registered in TWIMS (deer breeding facility, trap site, release site, or DMP facility). For the levels of DMP facilities established in this section, the highest status is Level 1 and the lowest status is Level 3.

(b) Special Provisions.

(1) A DMP facility that receives deer from a Class II release site is a Level 2 DMP facility unless the DMP facility receives deer from a TC 3 breeding facility or Class III release site.

(2) A DMP facility that receives deer from a Class III release site is a Level 3 DMP facility.

(3) If a breeder deer is transferred from a TC 3 breeding facility to a Level 1 or 2 DMP facility, the DMP facility immediately becomes a Level 3 DMP facility and the release site to which the deer are liberated from the DMP facility becomes a Class III release site beginning on the Saturday nearest to September 30 of the following year.

(4) No person may introduce a breeder deer into a Level 3 DMP facility or allow the release of a breeder deer on a Class III release site unless the deer has been tagged, prior to leaving the originating facility, by attaching a button-type RFID or NUES tag approved by the department to one ear.

(5) If a breeder deer is transferred from a TC 2 breeding facility to a Level 1 DMP facility:

(A) the DMP facility immediately becomes a Level 2 DMP facility; and

(B) the release site to which the deer are liberated from the DMP facility becomes a Class II release site beginning on the Saturday nearest to September 30 of the following year, unless the release site is or becomes a Class III release site pursuant to other provisions of this division.

(6) If a breeder deer is transferred to a breeding facility from a DMP facility of lower status, the breeding facility receiving the breeder deer automatically assumes the numeric status of the DMP facility. For example, if a breeder deer is transferred to a TC 2 breeding facility from a Level 3 DMP facility, the breeding facility becomes a TC 3 breeding facility.

(7) A DMP facility automatically becomes a Level 3 DMP facility if deer are introduced to the DMP facility from a Tier 1 facility.

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

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Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §65.95

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, a 60-day extension of new §65.95, concerning Chronic Wasting Disease - Triple T Permit Provisions, adopted on October 5, 2015 and published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7307). The new emergency rule is part of Subchapter B, Division 2, Chronic Wasting Disease - Movement of Deer.

Pursuant to Government Code, §2001.034 (the Texas Administrative Procedure Act), emergency rules may initially be in effect for no longer than 120 days, but may be extended for an additional 60 days.

The extension of the emergency rule is necessary to enable it to continue in effect until the end of the current permit year (March 31, 2016) for permits authorizing the trapping, transporting, and transplanting of deer, including permits authorizing the trapping, transporting, and processing of deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as "Triple T" permits). In addition, the department may issue permits authorizing the trapping, transporting and processing of surplus white-tailed deer (popularly referred to as TTP permits). White-tailed and mule deer are game animals. The department has promulgated regulations to address the Triple T and TTP for deer at 31 TAC, Chapter 65, Subchapter C.

For the reasons explained in this preamble, pursuant to Parks and Wildlife Code §12.027 and Government Code §2001.034, the department's executive director has determined that the presence of chronic wasting disease (CWD) poses an immediate danger to white-tailed and mule deer, which are species authorized to be regulated by the department, and that the adoption of the rule on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD in the index facility is unknown at this time. Within the five years preceding the discovery of CWD in the index facility, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and three Deer Management Permit (DMP) facilities in Texas, as well as two destinations in

Mexico). (A DMP is a permit issued by the department under rules adopted pursuant to Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, that allows the temporary possession of free-ranging white-tailed or mule deer for breeding purposes.) The department estimates that in those five years, more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility.

The emergency rule extended herein sets forth provisions governing the requirements and obligations of persons who move white-tailed and mule deer under Triple T permits. The new rule is part of a broader cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a transmissible spongiform encephalopathy (TSE), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE) in cattle, and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

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The department has engaged in several rulemakings over the years to address the threat posed by CWD in addition to the emergency and proposed rules referenced previously. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and the Texas Animal Health Commission (TAHC) convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a

CWD containment strategy in far West Texas. The rules among other things require deer harvested in a specific geographical area to be presented at check stations to be tested for CWD.

The department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer, ("emergency CWD breeder rules"), which were extended for an additional 60 days on December 1, 2015 (41 TexReg 9). The department also has adopted new rules to replace the emergency CWD breeder rules. Those rules were published for public comment in the October 2, 2015, issue of the *Texas Register*, approved by the Texas Parks and Wildlife Commission (the Commission) at its November 5, 2015 meeting, and will be effective February 2, 2016, and published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815). Similarly, the department adopted emergency rules governing Deer Management Permits (DMP, a permit that authorizes the temporary detention of free-ranging white-tailed deer for breeding purposes) on October 5, 2015 (40 TexReg 7305), which are being extended for an additional 60 days elsewhere in this issue of the *Texas Register*, to remain in effect until the interim DMP rules take effect. (The department published an interim proposed DMP rule in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086) and those rules were approved for adoption, with changes, by the Commission in a duly noticed meeting on January 21, 2016, and will be published in a future issue of the *Texas Register*.)

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 32,882 "not detected" CWD test results were obtained from free-ranging (i.e., not breeder) deer in Texas. Additionally, deer breeders have submitted 12,759 "not detected" test results to the department. The intent of the new emergency rule is to reduce the probability of CWD being spread from areas where it might exist and to increase the probability of detecting CWD where it does exist.

The new emergency rule sets forth specific provisions that tie the movement of deer under Triple T permits to the testing requirements imposed by §§65.90-65.93 of this title for release sites. The emergency rule obligates landowners of trap sites to CWD testing requirements in certain situations. The emergency rule replaces the current disease-testing rules located at 31 TAC §65.102 and will be in effect statewide for all Triple T permits. In contrast to the current rule, the emergency rule does not allow CWD test samples collected or tested prior to the Saturday closest to September 30 of the permit year to be used to satisfy the CWD testing requirements associated with TTT and TTP permit activities. The emergency rule also does not allow CWD test samples to be used in following years, nor does it continue the "preferred status" provisions of current §65.102(b) and (c), which allow trap sites with a demonstrated test history of "not detected" test results to test at a reduced rate once 60 "not detected" test results have been accumulated.

The department notes for purposes of clarification that the provisions of the CWD breeder rules apply to the emergency TTT rules adopted in this rulemaking, to the extent applicable. The applicable provisions would include, for example, the definitions in §65.90 and the categories and classes of breeding facilities and release sites.

Because deer trapped, transported, and released under a Triple T permit are liberated to the wild (2,565 in 2014), the potential for disease transmission to free-ranging deer poses a threat to free-ranging populations, given that any given trap site, in light

of the release of breeder deer from the index facility to multiple locations around the state, could be a pathway for CWD to be transmitted to free-ranging populations.

The emergency action is necessary to protect the state's white-tailed and mule deer populations.

The rule is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code, §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing. In addition, Parks and Wildlife Code, Chapter 43, Subchapter E, authorizes the department to regulate the trapping, transporting, and transplanting of white-tailed and mule deer for scientific, management, and propagation purposes.

§65.95. Chronic Wasting Disease - Triple T Permit Provisions.

(a) This section applies to a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), including:

- (1) a permit to trap, transport, and transplant game animals or game birds (Triple T permit);
- (2) a permit to trap, transport, and process surplus white-tailed deer (TTP permit); and
- (3) an urban white-tailed deer removal permit.

(b) General.

(1) The provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section.

(2) The department will not issue a Triple T permit that authorizes deer to be trapped at a

(A) Class III release site; or

(B) any site on a property where a deer has been confirmed positive for CWD.

(3) In addition to the reasons for denying a Triple T permit listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department believes that to do so would create an unacceptable risk for the spread of CWD.

(4) Notwithstanding the provisions of §65.93(a)(6) of this title (relating to Release Sites - Qualifications and Testing Requirements), the department may issue a Triple T permit unless otherwise prohibited by this section.

(5) All deer released under the provisions of this section shall be legibly tattooed in one ear with a department-assigned identification number prior to release.

(6) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods.

(7) The disease testing required by this section shall be performed on deer of at least 16 months of age.

(8) A test result is not valid if the sample was collected or tested prior to the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(9) Notwithstanding the provisions of subsections (c) and (d) of this section, a sample size shall be not more than 40 nor less than 10 deer.

(c) Disease Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless a sample of deer from the trap site equivalent to 10% of the number of deer to be transported has been tested and confirmed "not detected" for CWD by an accredited test facility.

(2) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(d) Disease Testing Requirements for TTP Permit.

(1) The landowner of a Class III release site must obtain valid CWD test results for 100% of the deer harvested pursuant to a TTP permit.

(2) A sample of deer from the trap site (other than a Class III release site) equivalent to 10% of the number of deer authorized to be trapped pursuant to TTP permit must be tested for CWD by an accredited test facility.

(3) Test results related to a TTP permit must be submitted to the department via TWIMS, or other approved process, by May 1.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600391

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Original effective date: October 5, 2015

Expiration date: April 1, 2016

For further information, please call: (512) 389-4775



Hannah Koonce, 8th Grade



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. PROCUREMENT

SUBCHAPTER D. CONTRACT MONITORING

1 TAC §69.55

The Office of the Attorney General (OAG), Contracts and Asset Management Division, proposes adding Subchapter D, §69.55, concerning identifying and escalating contracts that require enhanced contract or performance monitoring.

The 84th Texas Legislature, Regular Session (2015), enacted Senate Bill (SB) 20, effective September 1, 2015. SB 20 relates to state contracting and amends, among other things, numerous sections within the Texas Government Code relating to state agency purchasing and contracting. In particular, newly-enacted §2261.253(c) of the Government Code, "Required Posting of Certain Contracts; Enhanced Contract and Performance Monitoring," requires:

- each state agency, by rule, to establish a procedure to:
 - identify contracts that require enhanced contract or performance monitoring; and
 - submit information on these contracts to the agency's governing official.
- Additionally, the agency's contract management office or procurement director is required to immediately notify the agency's governing official of any serious issue or risk that is identified with respect to a contract monitored under §2261.253(c).

Mr. Louis Sellers, Chief, Contracts and Asset Management Division, has determined that for the first five-year period the section is in effect there will be no additional estimated costs to the state expected as a result of enforcing or administering the rule.

Mr. Sellers has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the addition of the section will be a more streamlined monitoring of contracts.

Mr. Sellers has also determined that there is no anticipated cost to persons who are required to comply with the section as proposed.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Mr. Louis Sellers, Chief, Contracts and Asset Management Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Louis.Sellers@texasattorneygeneral.gov.

The new section is proposed in accordance with Government Code, §2261.253(c), which requires the OAG to establish a procedure to identify each contract that requires enhanced contract or performance monitoring.

No other code, article or statute is affected by this proposal.

§69.55. Identification and Escalation of Contracts that Require Enhanced Contract or Performance Marketing.

(a) The agency will complete a risk assessment to identify contracts that require enhanced contract or performance monitoring.

(b) Information on these contracts will be reported to the First Assistant Attorney General at least quarterly. The First Assistant Attorney General will be notified immediately of any serious issue or risk that is identified with respect to such a contract.

(c) This subchapter does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

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

Filed with the Office of the Secretary of State on January 26, 2016.

TRD-201600343

Amanda Crawford

General Counsel

Office of the Attorney General

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 936-7940



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §§352.3, 352.7, 352.9, 352.21

The Texas Health and Human Services Commission (HHSC) proposes amendments to §352.3, concerning Definitions; §352.7, concerning Applying for Enrollment; §352.9, concerning Screening Levels; and §352.21, concerning Duty to Report Changes.

BACKGROUND AND JUSTIFICATION

Providers enrolled in Texas Medicaid and Medicare historically have been able to submit new location information using Provider Information Change (PIC) forms alone; however, §352.7 currently requires providers to submit a completed enrollment application for each practice location.

The use of PIC forms to add practice locations is allowable under federal and state law and in alignment with federal direction that state Medicaid programs can access the CMS enrollment system, or the Medicare Provider Enrollment, Chain, and Ownership System (PECOS), to verify provider location information. After implementation of the Affordable Care Act (ACA), CMS further encouraged use of PECOS by the states to determine whether practice locations were screened under Medicare, instead of requiring state Medicaid programs to redundantly screen Medicare-enrolled practice locations.

The current state requirement that a completed enrollment application be submitted for each new practice location creates an unnecessary administrative burden for providers, particularly considering that under the ACA, all providers must re-enroll by March 24, 2016. Texas Medicaid has a strong interest in ensuring that the administrative burden associated with enrollment and re-enrollment is not in excess of what is required by state and federal law, as long as all practice locations are screened and validated and mandated disclosures are still collected.

To ensure practice locations are enrolled in compliance with state and federal rules, while limiting the administrative burden for providers, these amendments revise rule provisions to require one enrollment application for each provider and all applicable application fees, and then leverage available Medicare data to ensure practice locations not included in the initial enrollment application are screened and validated. PIC forms, in lieu of a complete new application, will be accepted for limited-risk Medicaid providers and providers enrolled in both Medicaid and Medicare to update their practice locations. PIC forms or other supplemental forms will be revised as needed to indicate to the Texas Medicaid and Health Partnership and the HHSC Office of the Inspector General when the submitted form is not sufficient and will indicate that an enrollment application must be submitted for the new practice location (e.g. if the new location is associated with a new program or provider type or ownership change).

The proposed amendments will occur concurrently with amendments proposed for Chapter 371, Subchapter E of this title (relating to Provider Disclosure and Screening). The amendments to Chapter 371 were published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 717).

SECTION-BY-SECTION SUMMARY

Proposed §352.3 is amended to clarify that the definition for "Applicant" includes the enrollment of a practice location as defined in paragraph (7) of the rule. Paragraph (7) is further proposed for amendment to include the use of a supplemental enrollment form to add practice locations for Medicare-enrolled or limited-risk providers.

Proposed §352.7 removes language that requires a completed enrollment application for each practice location, to align with changes allowing for the use of a PIC form to add new practice location information for certain enrolled providers.

Proposed §352.9 clarifies that HHSC may rely on Medicare screening data as required under 42 Code of Federal Regulations §455.410. The amendment also clarifies that screenings

of provider practice locations may be conducted by a designee of HHSC.

Proposed §352.21 adds language clarifying that certain supplemental forms (including a PIC form) may be used by providers, as determined by HHSC, to notify HHSC of certain changes to its enrollment.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rule are in effect, there will be no impact to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rules, as they will not be required to alter their business practices to their detriment as a result of the amended rules.

PUBLIC BENEFIT AND COSTS

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be a decreased administrative burden on Medicaid providers.

Ms. Rymal has also determined that during the first five years the proposal is in effect, there are no anticipated costs to persons required to comply from implementing and enforcing the rule as proposed.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Alexander Melis; by fax to (512) 730-7472; by mail to P.O. Box 13247, MC H310, Austin, Texas 78711; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources

Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§352.3. *Definitions.*

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

(1) Applicant--An individual or an entity that submits an enrollment application to enroll or re-enroll as [become] a provider or to enroll a new practice location in Medicaid or CHIP as described in paragraph (7) of this section.

(2) CHIP--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and Chapter 62 of the Health and Safety Code.

(3) Change of ownership--A change of ownership related to a partnership, sole proprietorship, corporation, or leasing arrangement as defined in 42 CFR §489.18.

(4) Designee--An entity to which HHSC has delegated certain functions for provider enrollment purposes. A designee may include:

(A) an HHSC contractor;

(B) a health and human services agency; or

(C) a managed care organization (MCO) that contracts with HHSC under Medicaid or CHIP.

(5) Disenroll--To end a provider's participation in Medicaid or CHIP before the end of the provider's current enrollment period.

(6) Enrollment--The process for applying to become a provider, including contracting and procedures for determining whether to grant approval to enter into a provider agreement.

(7) Enrollment application--Documentation required [A form prescribed] by HHSC that an applicant [~~or re-enrolling provider~~] submits to HHSC [~~or its designee~~] to enroll or re-enroll as a provider or to add a new practice location. An enrollment application includes supplemental forms used to add practice locations for Medicare-enrolled or limited-risk providers, as determined by HHSC.

(8) Enrollment type--A type of enrollment category that identifies how the applicant seeks to enroll, such as individual, group, performing provider, or facility.

(9) Entity--A provider group, a facility, an organization, or a business registered with the Texas Secretary of State.

(10) Health care practitioner--A physician or non-physician licensed or certified health care provider who is recognized by federal law or by HHSC as a provider who can bill for medical services or benefits, submits orders or referrals for services to treat, certifies medical need for services, or supervises other individuals providing services and benefits to Medicaid or CHIP recipients.

(11) Health and human services agency--A state agency identified in §531.001(4) of the Government Code.

(12) HHSC--The Texas Health and Human Services Commission or its designee.

(13) Medicaid--The medical assistance program, a state and federal cooperative program authorized under Title XIX of the

Social Security Act that pays for certain medical and health care costs for people who qualify.

(14) National Provider Identifier--A unique ten-digit identification number assigned by the Centers for Medicare & Medicaid Services.

(15) Overpayment--A payment made to a provider in excess of the amount that is allowable for the service provided, plus any accrued interest.

(16) Person with an ownership or control interest--Has the meaning assigned by §371.1003 of this title (relating to Definitions).

(17) Provider--An applicant that successfully completes the enrollment process outlined in this chapter and in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(18) Provider agreement--An agreement between HHSC and a provider wherein the provider agrees to certain contract provisions as a condition of participation.

(19) Re-enrolling provider--A provider that submits an enrollment application before the end of the provider's current enrollment period.

(20) Recipient--A person receiving benefits under Medicaid or CHIP.

(21) Surety bond--One or more bonds issued by one or more surety companies under 31 U.S.C. §§9304 - 9308 and 31 CFR parts 223, 224, and 225.

(22) Terminate--To take an adverse action against a provider whose participation in Medicaid or CHIP has ended at federal or state agency direction due to violation of state rules or federal regulations.

(23) Third-party billing vendor--A vendor registered with HHSC or its designee that submits claims for reimbursement on behalf of a provider.

§352.7. *Applying for Enrollment.*

(a) To apply for enrollment or re-enrollment, an applicant or re-enrolling provider must:

(1) meet the requirements outlined in §352.5 of this chapter (relating to Provider Enrollment Requirements) and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity);

(2) complete an enrollment application [~~for each practice location~~] in accordance with the criteria specified by HHSC or its designee and the instructions contained in the application;

(3) submit a supplemental application form or forms for any new practice location in accordance with the criteria specified by HHSC and the instructions contained in the form;

(4) [~~3~~] submit an application fee for each practice location, as described in subsection (b) of this section;

(5) [~~4~~] submit documentation to show proof of registration and good standing with the Texas Comptroller of Public Accounts, the Texas Secretary of State, or any other documentation requested by HHSC or its designee, as applicable;

(6) [~~5~~] provide a copy of a surety bond obtained pursuant to §352.5 of this chapter;

(7) [(6)] certify that the information contained in the application is true and accurate to the best of the applicant's or re-enrolling provider's knowledge; and

(8) [(7)] submit a signed provider agreement with each enrollment application. By signing the provider agreement, the applicant or re-enrolling provider acknowledges that the applicant or re-enrolling provider will comply with all terms and conditions of the provider agreement.

(b) If an applicant or re-enrolling provider must pay an application fee pursuant to 42 CFR §455.460 in an amount determined by 42 CFR §424.514, the applicant or re-enrolling provider must submit:

(1) the application fee; or

(2) documentation showing proof of payment of the application fee within the current enrollment period (as defined by 42 CFR §424.515) under Title XVIII or any other state's program under Title XIX or Title XXI of the Social Security Act.

(c) An applicant or re-enrolling provider must provide all additional information requested by HHSC or its designee in connection with the processing of the enrollment application, by the deadline and in the manner indicated in the request. If the applicant or re-enrolling provider fails to comply with this requirement, the enrollment application will be closed.

(d) If an applicant or re-enrolling provider fails to meet any of the requirements in this section, HHSC or its designee will consider the enrollment application incomplete and the application will not be processed.

§352.9. Screening Levels.

(a) HHSC assigns an applicant or re-enrolling provider a screening level of "Limited," "Moderate," or "High" based on:

(1) the federal screening level for the type of provider as provided by 42 CFR §424.518, if applicable;

(2) the federal screening level for the type of provider as provided by 42 CFR §455.450; or

(3) HHSC's assessment of:

(A) the risk level for potential fraud, waste, or abuse associated with the type of provider or the geographical area; or

(B) other factors as determined by HHSC, including:

(i) a change in business structure or organization;

(ii) past practices and circumstances; and

(iii) access to care in a geographical area.

(b) For a screening level of "Limited" or "Moderate" assigned under subsection (a) of this section, HHSC may assign a higher screening level based on provider, type of provider, or geographical area. For the requirements outlined in subsection (c) of this section, HHSC may rely on other validated screenings performed by Medicare, as provided for by 42 C.F.R. §455.410.

(c) Requirements for screening levels.

(1) Limited.

(A) For a provider assigned a screening level of "Limited," HHSC:

(i) verifies that a provider meets any federal or state requirements for that type of provider;

(ii) verifies licensure certifications, including licensure certifications in Texas and any other state; and

(iii) conducts database checks pursuant to 42 CFR §455.436.

(B) A provider assigned a screening level of "Limited" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(2) Moderate.

(A) For a provider assigned a screening level of "Moderate," HHSC:

(i) performs the screening described in paragraph (1)(A) of this subsection; and

(ii) performs at least one unscheduled and unannounced pre- and post-enrollment site visit in accordance with 42 CFR §455.432.

(B) A provider assigned a screening level of "Moderate" must submit a new enrollment application at least every five years, unless HHSC determines a shorter enrollment period.

(3) High.

(A) For a provider assigned a screening level of "High," HHSC:

(i) performs the screening described in paragraph (2)(A) of this subsection;

(ii) conducts a criminal background check; and

(iii) requires the submission of a set of fingerprints if applicable under 42 CFR §455.434.

(B) A provider assigned a screening level of "High" must submit a new enrollment application at least every three to five years, unless:

(i) HHSC determines a shorter enrollment period; or

(ii) the provider meets the requirements of §371.1007 of this title (relating to Screening Levels).

(d) In addition to the screening requirements provided under this section, additional screening may be performed under §371.1009 of this title (relating to Verifications Required for Each Screening Level).

(e) A screening level assigned under subsection (a)(3) of this section is within the sole discretion of HHSC and is not subject to administrative review.

§352.21. Duty to Report Changes.

(a) As a condition of continued enrollment, a provider must notify HHSC or its designee in writing of any change in its status or condition with respect to the information disclosed in an enrollment application or other supplemental form to an enrollment application, as determined by HHSC, including:

(1) National Provider Identifier or associated taxonomy code;

(2) Medicare number;

(3) Medicare certification status;

(4) federal tax identification number;

(5) responsible billing party for the provider;

(6) physical address for the provider or responsible billing party;

- (7) the name, address, date of birth, and Social Security number of any managing employee of the provider;
- (8) enrollment type;
- (9) provider licensure, certification, accreditation;
- (10) any change of ownership as required by 42 CFR §489.18;
- (11) a change in the person with an ownership or control interest in the provider;
- (12) information required to be disclosed under Chapter 371 of this title (relating to Other Health and Human Services Fraud and Abuse Program Integrity);
- (13) third-party billing vendor services; or
- (14) any other information required by HHSC or its designee.

(b) Time frame for reporting changes.

(1) If a change described in subsection (a) of this section occurs due to a change of ownership or control interest, the provider must report the change to HHSC or its designee within 30 days of the change of ownership.

(2) For all other changes, the provider must report the change to HHSC or its designee within 90 days of the occurrence.

(c) Upon notification of a change that is reported in accordance with this section, HHSC or its designee may require the submission of a new enrollment application and fee, if applicable, provider agreement, provider licensure or certification, or other documentation necessary to verify the reported change.

(d) If a provider does not report a change as required by this section or 42 CFR §489.18, or does not submit an item HHSC or its designee requires under subsection (c) of this section, HHSC or its designee may, retroactive to the date that the change should have been reported:

- (1) disenroll the provider or terminate the provider's participation in Medicaid or CHIP;
- (2) deny further reimbursement; and
- (3) recoup payments made to the provider.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600441
 Karen Ray
 Chief Counsel
 Texas Health and Human Services Commission
 Earliest possible date of adoption: March 13, 2016
 For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION
PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.9

The Texas Alcoholic Beverage Commission proposes amendments to §33.9, relating to Fees for On-Line Transactions.

Section 33.9 sets the fees for on-line transactions with the commission. The proposal clarifies that a credit card transaction incurs a 25 cent fee, plus an additional fee of 2.75 percent of the total transaction amount. These fees for the use of a credit card would not be changed under the proposal.

A transaction paid by ACH or electronic check currently incurs a 25 cent fee plus an additional fee of 0.5% of the total transaction amount. The proposal would modify the fee structure for these transactions by eliminating the 25 cent fee and imposing a flat fee of one dollar rather than basing the fee on the transaction amount.

The proposed amendments are consistent with the fees required by Texas.Gov, which processes the commission's on-line transactions.

Section 33.9 is also being 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 section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local government attributable to the amendments. There should be no fiscal impact on state government, as the fees are calculated to recover the costs of the services provided.

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. Fees for credit card transactions are unchanged in the proposal. The impact of proposed changes to the fees for ACH or electronic check transactions will vary depending on the amount of the transaction, but in most cases the total amount will be less than the total current fees. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the costs of providing on-line transactions will be covered by those making such transactions.

Comments on the proposed amendments 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.texas.gov/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 amendments on Thursday, February 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §5.55, which allows the commission to charge a reasonable service fee to applicants using electronic or internet service to apply for licenses, permits and certificates.

The proposed amendments affect Alcoholic Beverage Code §5.31 and §5.55 and Government Code §2001.039.

§33.9. *Fees for On-Line Transaction.*

- (a) This rule relates to §5.55 of the Alcoholic Beverage Code.
- (b) A service fee of \$0.25 shall be assessed for each on-line transaction paid by credit card.
- (c) An additional fee of 2.75% of the total transaction amount shall be assessed for transactions paid by credit card.
- (d) A service [~~An additional~~] fee of one dollar (\$1.00) [~~0-5% of the total transaction amount~~] shall be assessed for transactions paid by ACH or electronic check.

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

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Martin Wilson

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For further information, please call: (512) 206-3489



CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.52

The Texas Alcoholic Beverage Commission proposes amendments to §41.52, relating to Private Clubs--In General.

Section 41.52 sets forth general rules relating to private clubs. Most of the proposed changes are grammatical, change outdated references, correct internal references, change gender-specific references to gender-neutral references, or change the word "administrator" to "executive director" (pursuant to Alcoholic Beverage Code §5.11(b) and commission practice).

Currently, the language of subsection (c)(1)(F) references a tax bond requirement. Consistent with the commission's treatment of tax bonds generally, the reference would be changed to apply to any bond that may otherwise be required but to remove an affirmative obligation in this section that a bond be maintained.

The proposal also addresses food service requirements in subsection (e). The requirement for "complete" meals would be eliminated. Under the proposal, clubs could fulfill the food service obligation by contracting with an outside vendor. The food would have to be available upon request and be delivered to and served on the club's premises. In addition, payment for the food service would have to be made by the member to the club, and not to the outside vendor.

Section 41.52 is also being 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 section continues to exist but that it should be amended.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on local or state government attributable to the amendments.

The proposed amendments 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.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because regulatory burdens regarding bonds and food service are relaxed in a manner consistent with the commission's mission.

Comments on the proposed amendments 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.texas.gov/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 amendments on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendments affect Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.52. *Private Clubs--In General.*

(a) Scope. This section does not apply to temporary members or to hotel patrons, as described in the Alcoholic Beverage Code, §§32.09, 32.10, and 32.11. In addition, subsection (c)(1)(G) and (H) and subsection (e) of this section do not apply to fraternal organizations or to veterans' organizations.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) Club--A private club.
- (2) Member and membership--a member of and membership in a private club.

(c) Membership and related topics.

(1) No private club shall be qualified to hold a private club registration permit unless it shall:

- (A) have 50 or more members at all times;
- (B) have a membership committee composed of three or more members of the club and vested with authority by charter, by-law or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and

when functioning as such shall be subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes shall be required of any discussion or action regarding a membership application which is denied;

(C) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;

(D) keep a well-bound [~~well bound~~] book in which is shown the following about each member: the [~~The~~] full name of the member, the member's [~~his~~] initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership. When [~~Provided that when~~] a member has been removed from membership, the [~~his~~] membership number may be reassigned to another member. Additional well-bound [~~Provided further that additional well bound~~] books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club. A [~~Provided further that a~~] club using a computer system [~~business machine~~] to maintain its membership records shall not be required to keep a well-bound [~~well bound~~] book if such computer system [~~machine~~] provides the [~~such~~] information as [~~shall be~~] required by the executive director [~~administrator~~], and is approved in writing by the executive director or the executive director's designee [~~administrator~~];

(E) keep all books, records and minutes required herein on the premises of such club, and make them available to any representative of the commission upon reasonable notice;

(F) maintain in force any bond required and executed by [~~a bond executed by~~]: the corporation[~~;~~] as principal, if an incorporated club[~~;~~] or [~~;~~] by an officer of the club[~~;~~] as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes owed [~~owned~~] by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the executive director [~~administrator~~] and the attorney general of Texas;

(G) if operating under the locker system, at all times keep all liquor owned by each member under the locker system in a locker located on the premises and rented only to such member, except when the member, one of the member's [~~his~~] family or the member's [~~his~~] guest is present on the premises and using such liquor; and

(H) if operating under the pool system, keep a well-bound [~~well bound~~] book in which is recorded the following about each member of the pool: the member's [~~His~~] name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. The information required to be kept in a book by this subparagraph [~~paragraph~~] may be kept in the book required in subparagraph (D) of this paragraph. A [~~Provided that a~~] club using a computer system [~~business machine~~] to bill each member of its liquor pool shall not be required to have such well-bound [~~well bound~~] book if such computer system [~~machine~~] provides the [~~such~~] information [~~as shall be~~] required by the executive director [~~administrator~~] and is approved by the executive director or the executive director's designee [~~administrator~~].

(2) No membership shall be terminated except by action of the membership committee or by written resignation of the mem-

ber. Resignation of any member shall be recorded immediately in the minute book of the membership committee and in the records required by subparagraph [~~paragraph~~] (1)(D) of this paragraph [~~subsection~~].

(3) The executive director [~~administrator~~] may, after notice and hearing, refuse to issue a private club registration permit if the executive director [~~he~~] finds that the applicant has failed to comply with any requirement set forth in this subsection.

(4) After notice and hearing the executive director [~~administrator~~] may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if the executive director [~~he~~] finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section.

(d) Who may consume. As provided in the Alcoholic Beverage Code, §32.01, alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

(1) The word "member" shall mean a person who has been admitted to membership as provided in subsection (c) of this section.

(2) The term "member's family" shall mean the spouse, parents, and adult children of the member.

(3) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(e) Food service. A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that [~~complete~~] meals shall be available on the club premises for service to members, their families, and guests. The food service requirement may be fulfilled through the use of a concession or catering agreement with an outside vendor. Prepared food must be available upon request, and must be delivered and served at the licensed premises. Payment for food service must be made to the private club.

(f) Suspension and cancellation. After notice and hearing the executive director [~~administrator~~] may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if the executive director [~~he~~] finds that the club or any of its members, agents, servants, or employees has:

(1) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the executive director [~~administrator~~]; or [~~and~~]

(2) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this section or by any provision of the Alcoholic Beverage Code.

(g) Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable [~~license~~] information and proof of such consent must be maintained with the permittee's membership records.

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

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Martin Wilson

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



16 TAC §41.54

The Texas Alcoholic Beverage Commission proposes the repeal of §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. The commission has reviewed the section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions are necessary. Therefore, the commission is proposing to repeal the text of this section as it currently exists and separately replace it with new text under the same rule number and title.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government.

The proposed repeal 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.

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because outdated and outmoded procedures will be removed so that more efficient procedures can replace them.

Comments on the proposed repeal 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.texas.gov/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 repeal on Thursday, February 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed repeal affects Alcoholic Beverage Code §5.31 and Government Code §2001.039.

§41.54. *Destructions.*

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

Filed with the Office of the Secretary of State on January 29, 2016.

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Martin Wilson

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



16 TAC §41.54

The Texas Alcoholic Beverage Commission proposes new §41.54, relating to Destructions.

Section 41.54 addresses the procedures to be followed by certain permittees and licensees who wish to obtain a tax exemption or tax credit for alcoholic beverages that are destroyed. In a separate rulemaking, the commission has reviewed the current section pursuant to Government Code §2001.039 and has determined that the need for a rule continues to exist but that substantial revisions to the existing rule are necessary. Therefore, in that separate rulemaking the commission is proposing to repeal the text of this section as it currently exists and in this rulemaking the commission is proposing to replace it with new text under the same rule number and title.

Proposed subsection (a) specifies which permittees and licensees are entitled to a tax exemption or tax credit for alcoholic beverages that are destroyed in accordance with the section.

Proposed subsection (b) defines which destructions qualify for a tax exemption or tax credit.

Proposed subsection (c) specifies the timeline to notify the commission prior to a destruction and that an Application for Destruction of Alcoholic Beverages must be used to provide the notice. It also requires that written approval be received before the destruction occurs.

Proposed subsection (d) specifies the documents to be retained after a destruction, including a copy of the Application for Destruction of Alcoholic Beverages signed by an authorized representative of the commission, any receipt for fees charged by the facility where the destruction occurred, and an affidavit of destruction executed by an employee of the permittee or licensee who witnessed the destruction.

Proposed subsection (e) provides that the approved Application for Destruction of Alcoholic Beverages must be submitted with the monthly excise tax report filed with the commission upon which the tax exemption is claimed. If a permittee or licensee is unable to claim the destruction as an exemption on a tax report, the subsection would allow the permittee or licensee to submit a letter requesting issuance of an authorized tax credit.

Proposed subsection (f) requires that the permittee or licensee retain a copy of the Application for Destruction of Alcoholic Beverages.

Proposed subsection (g) specifies that the commission may require that the alcoholic beverages designated for destruction be physically inspected by the commission's authorized represen-

tative prior to destruction and/or that the actual destruction be witnessed by such a representative.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local or state government.

The proposed new rule 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.

Mr. Wilson has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the procedures for claiming a tax exemption or tax credit on destroyed alcoholic beverages will be clear.

Comments on the proposed new rule 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.texas.gov/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 new rule on Thursday, February 25, 2016 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed new rule affects Alcoholic Beverage Code §5.31. §41.54. Destructions.

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, shall be entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with the provisions of this section.

(b) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit, the alcoholic beverages must be destroyed in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(c) Prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, the permittee or licensee must comply with the requirements of this subsection.

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on an Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(d) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the documentation referenced in this subsection and make it available to an authorized representative of the commission upon request.

(1) A signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved shall be provided to the permittee or licensee by the nearest authorized representative of the commission when the destruction is approved.

(2) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the permittee or licensee shall retain a copy of the receipt for payment of this fee.

(3) An employee of the permittee or licensee who witnessed the destruction of the alcoholic beverages must execute an affidavit of destruction. The affidavit shall include the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits and wine, for ale and malt liquor, and for beer.

(e) The approved Application for Destruction of Alcoholic Beverages (including any attachments) shall be submitted with the monthly excise tax report filed with the commission upon which the exemption for the destruction is claimed. If the permittee or licensee is unable to claim the destruction as an exemption on a tax report, it may submit a letter to the Commission requesting issuance of an authorized tax credit.

(f) A copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) should be retained in the permittee's or licensee's files and made available upon request for inspection by an authorized representative of the commission.

(g) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

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

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Martin Wilson

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Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3489



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.6

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.6, concerning

Advisory Committees. Specifically, the proposed amendment to §1.6(g) provides a nomination process for non-higher education institutional representatives on certain Coordinating Board advisory committees. This section is also amended to specify that the Board may replace a member who becomes unassociated with the nominating institution or entity.

Ms. Linda Battles, Deputy Commissioner for Agency Operations and Communications/COO, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Ms. Battles has determined that the public benefit anticipated as a result of administering this section will be the expanded opportunity for stakeholders who are not affiliated with an institution of higher education to participate on certain THECB advisory committees. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Ms. Linda Battles, Deputy Commissioner for Agency Operations and Communications/COO, THECB, 1200 East Anderson Lane, Austin, Texas 78752, linda.battles@thech.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Government Code, Chapter 2110, which provides the Coordinating Board with the authority to create advisory committees.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Subchapter A, §1.6.

§1.6. *Advisory Committees.*

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

(g) Membership. The Board shall solicit nominations and make appointments from such nominations for membership on advisory committees from presidents and chancellors, or the respective designee. For advisory committees that include members not associated with an institution of higher education, the Board shall solicit nominations from appropriate entities, such as stakeholder organizations whose membership consists of the type of representative the advisory committee is seeking. Except as otherwise provided by law, all members of advisory committees are appointed by and serve at the pleasure of the Board. Board members may not serve on advisory committees. If an advisory committee member resigns, is no longer associated with the nominating institution or entity, dies, becomes incapacitated, is removed by the Board, otherwise vacates his or her position, or becomes ineligible prior to the end of his or her term, the Board may appoint a replacement who shall serve the remainder of the unexpired term.

(h) - (n) (No change.)

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

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TRD-201600366

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

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SUBCHAPTER E. STUDENT COMPLAINT
PROCEDURE

19 TAC §§1.110, 1.113 - 1.115

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§1.110 and 1.113 - 1.115, concerning the Student Complaint Procedure. The amended rules clarify and update the procedures for filing a student complaint against an institution of higher education. The new language provides for the use of a more efficient online student complaint form, updates the mailing address for complaints mailed to the Agency, and specifies that the evaluation of a student's academic performance is under the sole purview of the student's institution and its faculty.

Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Booker has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be an improved understanding of the student complaint process. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, J.D., THECB, P.O. Box 12788, Austin, Texas 78711 or via email at jane.caldwell@thech.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.031, which provides the Coordinating Board with the authority to adopt rules for handling student complaints concerning higher education institutions.

The amendments affect Texas Education Code, §61.031.

§1.110. *Definitions.*

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

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

(6) Student complaint form--A standard form required for filing a student complaint with the Agency, available [in downloadable format] on the Agency's website or by request in hard copy form from the Agency[; which is required to be used in filing any student complaint with the Agency].

(7) (No change.)

§1.113. *Complaints Not Reviewed by the Agency.*

The following is a non-exhaustive list of student complaints that are not reviewed by the Agency:

(1) (No change.)

(2) The Agency does not intervene in matters solely concerning an individual's grades, [or] examination results, or evaluation of academic performance, as these are within the sole purview of the institution and its faculty.

(3) - (8) (No change.)

§1.114. *Filing a Complaint.*

(a) (No change.)

(b) Complainants shall submit [send] student complaint forms through the online process provided on the agency's website, by electronic mail (email) to StudentComplaints@theeb.state.tx.us, or by hard copy sent [mail] to the Texas Higher Education Coordinating Board, College Readiness and Success Division [Office of the General Counsel], P.O. Box 12788, Austin, Texas 78711-2788. Facsimile (FAX) transmissions of the student complaint form are not accepted.

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

§1.115. *Referral of Certain Complaints to Other Agencies or Entities.*

Once the Agency receives a student complaint form, the Agency may refer the complaint to another agency or entity as follows:

(1) Complaints alleging that an institution has violated state consumer protection laws, e.g., laws related to fraud or false advertising, may [shall] be referred to the Consumer Protection Division of the Office of the Attorney General of Texas for investigation and resolution.

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

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.11

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §4.11, concerning the Common Admission Application Forms. The amended rule adds needed definitions and reorganizes old subsections of the rule to better group related topics. Old language is amended to reflect the multiple common admissions applications that are available and to reflect that two-year public institutions are now required to accept Apply Texas applications. New language indicates institutions failing to pay their share of the cost by the due date may be denied access to incoming application data until such time that payments are received.

Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Booker has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be an improved understanding of the Apply Texas System requirements and options by participating institutions of higher education. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, J.D., THECB, P.O. Box 12788, Austin, Texas 78711 or via email at applytexasapplication@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §51.762, which provides the Coordinating Board with the authority to adopt rules for the Apply Texas Admission Application Forms.

The amendments affect Texas Education Code, §51.762.

§4.11. *Common Admission Application Forms.*

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Apply Texas Advisory Committee--An advisory committee composed of representatives of general academic teaching institutions, community college districts, public state colleges, and public technical institutes, authorized by Texas Education Code, §51.762 and established in accordance with Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), to provide the Texas Higher Education Coordinating Board assistance in developing and implementing admissions application forms and procedures.

(2) Apply Texas System--the state's system for applying for admission to Texas public institutions of higher education. The System includes an access portal for completing application forms; help desks to provide users assistance; and a portal through which Texas high school counselors access status data regarding student progress in applying for admission to and financial aid for college.

[(a) A common application form for freshman and undergraduate transfer applications is hereby adopted by the Coordinating Board pursuant to Texas Education Code, §51.762. The form is adopted in both a printed format, distributed each August to Texas high schools and available at www.collegeforalltexas.com; and in an electronic format (www.applytexas.org). The Board, with the assistance of an advisory committee established by, and in accordance with, Board rules, Chapter 1, Subchapter G, §§1.128 - 1.134 of this title (relating to Apply Texas Advisory Committee), will review the form and recommend any changes for subsequent academic years.]

(b) Acceptance of Admission Applications.

(1) Public community [junior] colleges, public state colleges, and public technical institutes shall [must] accept freshman and undergraduate transfer applications submitted using the Board's electronic common admission application forms [form].

(2) General academic teaching institutions shall [must] accept freshman and undergraduate transfer applications submitted using either the Board's electronic or printed forms [format].

(c) Application Forms. Adjustments to Paper Forms. When sending a printed common application form to a student with or without other materials, an institution shall not alter the form in any way and shall include instructions for completing the form, general application information, and instructions for accessing a list of deadlines for all institutions.

~~[(e) Each general academic teaching institution shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board.]~~

~~[(d) All general academic teaching institutions shall adhere to the following guidelines:]~~

~~[(1) No general academic teaching institution shall pre-print its own name on the printed common application form, and no general academic teaching institution's name or logo shall appear on the form.]~~

~~[(2) When sending the common application to a student along with other supplemental information or when inserting it into a viewbook, it shall be included with no alterations and shall include the instructions for completing the application, the general application information and the list of deadlines for all general academic teaching institutions.]~~

~~(d) [(e) Outreach to Public High Schools. The Coordinating Board shall ensure that copies of the freshman common admission application forms [form] and information for their [its] use are available [for distribution] to appropriate personnel at each Texas public high school. The Coordinating Board will work with institutions and high schools to ensure that all high schools have access to either the printed or electronic common application forms [form]. [Participating institutions may charge a reasonable fee for the filing of a common application form.]~~

(e) Data to be Collected.

(1) Common application forms are to include questions needed for determining an applicant's residence status with regard to higher education and other information the Board considers appropriate.

(2) Each general academic teaching institution, public community college, public state college, and public technical institute shall collect information regarding gender, race/ethnicity, and date of birth as part of the application process and report this information to the Coordinating Board. Common application forms do not have to be the source of those data.

(3) Institutions of higher education may require an applicant to submit additional information within a reasonable time after the institution has received a common application form.

(f) Publicity. The Board shall publicize in both electronic and printed formats the availability of the common admission forms.

~~(g) [(f) Subcontract for Technical Support. The Coordinating Board shall enter into a contract with a public institution of higher education to maintain the electronic common application system for use by the public in applying for admission to participating institutions and for distribution of the electronic application to the participating institutions designated by the applicant.~~

(h) Costs.

(1) Participating institutions may charge a reasonable fee for the filing of a common application form.

(2) Operating costs of the system will be paid for by all institutions required to use the common application plus independent and health-related institutions that contract to use the electronic application.

(3) Each participating institution shall pay a portion of the cost based on the percentage of its enrollment compared to the total enrollment of all participating institutions based on the [previous year's] certified enrollment data of the most recent fall semester. The Coordinating Board will monitor the cost of the system and notify the institutions on an annual basis of their share of the cost. Billings for the services for the coming year will be calculated and sent to the institutions by September 1 [July 15th] of each fiscal year and payments must be received no later than December 1[5] of each fiscal year.

(4) The Coordinating Board shall send participating institutions reminders of payment amounts and the due date. Institutions failing to pay their share of the cost by the due date may be denied access to in-coming application data until such time that payments are received.

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.1

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §21.1 concerning the General Provisions. This section regarding the interest and sinking fund is amended to reflect current student loan bond covenants and industry standards.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

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

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@thecb.state.tx.us. Comments will

be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The amendments affect Texas Education Code, §52.17.

§21.1. Fund Requirements for Student Loan Bonds Interest and Sinking Fund.

(a) There shall be deposited into the interest and sinking fund the following:[:]

(1) Money received in each Fiscal Year as repayment of student loans granted under the General Provisions of the Student Financial Assistance Act of 1975. The accumulated amount for all outstanding bonds at each fiscal year end shall be sufficient to pay the interest on and principal due in the ensuing fiscal year.

(2) Money transferred by the Board from the Student Loan Auxiliary Fund to the extent permitted by law, including Subchapter F of the General Provisions of the Student Financial Assistance Act of 1975, the Interest and Sinking Fund in the event funds on deposit in the Interest and Sinking Fund are insufficient to pay principal of and interest on any of previously issued bonds and additional bonds; and to the extent permitted by law, including Subchapter F of the General Provisions of the Student Financial Assistance Act of 1975, to transfer to other funds and accounts established by the Board to comply with covenants related to maintaining the tax-exempt status of the bonds.

(3) Accrued interest earned by the interest and sinking account, if any.

(4) In the event funds on deposit in the Interest and Sinking Fund are insufficient to pay principal of and interest on any of all outstanding bonds at year end, money required by the Constitutional Provision and the General Provisions of the Student Financial Assistance Act of 1975 is to be transferred into the Interest and Sinking Fund by the Comptroller out of first moneys coming into the State Treasury in each Fiscal Year not otherwise appropriated by the State Constitution.

~~{(1) From the proceeds of the bonds, an amount of money sufficient to pay the interest on the bonds for a period of 24 months from the date of the bonds. Such funds so deposited should remain in the interest and sinking fund until used for the original purpose for which they were deposited. Bond resolutions provide that on the direction of the board, such money may be transferred to the Texas opportunity plan fund to the extent that it will not be needed because of money received as repayment of student loans and interest thereon, and such transfers should be made only when loan demand has exceeded expectations and no other source of funds for loans is available. It is the intent of this procedure to reduce transfers between funds to a minimum.}~~

~~{(2) From the proceeds of the bonds, an amount which, when added to the amount now to the credit of the reserve portion, will be equal to the average annual principal and interest requirements on the bonds and the outstanding bonds. Such funds so deposited in the reserve portion of the interest and sinking fund should remain in the reserve portion and be used only in cases of emergency when no other source of funds is available other than first monies coming into the state treasury, or to make final payments of principal and interest to become due on the bonds. The amount of average annual principal and interest requirements shall be recomputed only at such times as immediately after each sale of additional bonds; or, in the event no bond sales occur during a fiscal year, only at the close of a fiscal year.}~~

~~{(3) Money received in each fiscal year as repayment of student loans granted under the Act and interest thereon, including interest payments received from the federal government on behalf of student borrowers, sufficient to pay the interest on and principal of bonds to become due during the ensuing fiscal year and sufficient to maintain the reserve portion equal to the average annual principal and interest requirements on all bonds, outstanding bonds, and additional bonds at the time unpaid.}~~

~~{(4) Money required by the constitutional provision and the Act to be transferred into the interest and sinking fund by the state treasurer out of first monies coming into the treasury of the State of Texas in each fiscal year not otherwise appropriated by the constitution.}~~

~~{(5) Money in the interest and sinking fund, including the reserve portion, shall be used only for the purpose of paying interest on and principal of the bonds.}~~

(b) The board may transfer funds, in excess of the ensuing fiscal year requirement above, to the Texas Opportunity Plan Fund or the Student Loan Auxiliary Fund at the beginning of each ensuing fiscal year.

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

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Bill Franz

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19 TAC §§21.9 - 21.11

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.9 - 21.11, concerning General Provisions. Section 21.9 is repealed (House Bill 700, 84th Texas Legislature) as it is no longer relevant. Section 21.10 and §21.11 are repealed and readopted to reflect renumbering and new language.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, there is no impact on the public as a result of administering these sections. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theqb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The repeals affect Texas Education Code §56.465.

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

§21.10. *Exclusion of Certain Resources in Determining Need for State Aid.*

§21.11. *Priority Deadline for Applying for State Aid.*

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

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19 TAC §21.9, §21.10

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes new §21.9 and §21.10, concerning General Provisions. These sections are being repealed and replaced with new sections to reflect renumbering and new language. New §21.10 is revised to eliminate reference to the first academic year (2013-2014, or later) to which the financial aid priority application deadline was applicable.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to better meet the needs of their student populations and local community's workforce.

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

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

The new sections affect Texas Education Code, §56.008.

§21.9. *Exclusion of Certain Resources in Determining Need for State Aid.*

The right of a person to receive payments or benefits from the Higher Education Savings Plan, Prepaid Tuition Unit Undergraduate Education Program: Texas Tomorrow Fund II, or the Texas Save and Match Program, authorized in the Texas Education Code, Chapter 54, Subchapters G, H, or I, is not to be considered an asset of the person or otherwise included in the person's household income or other financial resources for purposes of determining the person's eligibility for a TEXAS grant or other state-funded financial assistance.

§21.10. *Priority Deadline for Applying for State Aid.*

(a) All general academic teaching institutions shall use March 15 as their priority application deadline for application for state financial assistance for the following year.

(b) The priority deadline is not to serve as a determination of eligibility for state financial assistance, but otherwise eligible students who apply on or before the deadline shall be given priority consideration for available state financial assistance before other applicants.

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

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SUBCHAPTER D. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM: ALL LOANS MADE BEFORE FALL SEMESTER, 1971, NOT SUBJECT TO THE FEDERALLY INSURED STUDENT LOAN PROGRAM

19 TAC §21.100

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §21.100 concerning the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program. Senate Bill 215, 83rd Texas Legislature, repealed Texas Education Code, §52.56, which required the Coordinating Board to provide an annual report on the operations of the Texas Opportunity Plan Fund. Since §52.56 has been repealed, it is appropriate to delete §21.100 from the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Puls has also determined that for each year of the first five years the section is in effect, there is no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Chapter 52, which provides the Coordinating Board with the authority to adopt rules to implement the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program

The repeal affects Texas Education Code, §52.56, which was repealed in FY 2013 (Senate Bill 215, 83rd Texas Legislature).

§21.100. *Annual Report.*

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

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SUBCHAPTER H. TEACHER EDUCATION LOAN PROGRAM

19 TAC §§21.191 - 21.207

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.191 - 21.207 concerning the Teacher Education Loan Program. The 71st Texas Legislature repealed the Teacher Education Loan Program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 54, §54.101, which provided the Coordinating Board with the authority to adopt rules to implement the Teacher Education Loan Program.

The repeals relate to Texas Education Code, Chapter 54, former §54.101, which was repealed in 1989.

§21.191. *Purpose.*

§21.192. *Administration.*

§21.193. *Delegation of Powers and Duties.*

§21.194. *Designation of Institutional Representative.*

§21.195. *Definitions.*

§21.196. *Qualifications for Loans.*

§21.197. *Allocation of Funds.*

§21.198. *Amount of Loan.*

§21.199. *Notification of Availability of Teacher Education Loans.*

§21.200. *Payments to Students.*

§21.201. *Student Status.*

§21.202. *Period of Loans.*

§21.203. *Loan Interest.*

§21.204. *Repayment of Loans.*

§21.205. *Loan Cancellation.*

§21.206. *Postponements.*

§21.207. *Enforcement of Collection.*

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

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SUBCHAPTER I. FUTURE TEACHER LOAN PROGRAM

19 TAC §§21.221 - 21.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.221 - 21.241 concerning the Future Teacher Loan Program. The 71st Texas Legislature repealed the program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, §60.03 which, prior to the program's repeal in 1989, provided the Coordinating Board with the authority to adopt rules to implement the Future Teacher Loan Program.

The repeal relates to Texas Education Code, former §60.03, which was repealed in 1989.

§21.221. *Purpose.*

§21.222. *Administration.*

§21.223. *Delegation of Powers and Duties.*

§21.224. *Definitions.*

§21.225. *Loans.*

§21.226. *Eligible Institutions.*

§21.227. *Qualifications for Loans.*

§21.228. *Allocation of Funds.*

§21.229. *Amount of Loan.*

§21.230. *Reasonable Expenses for a Student.*

§21.231. *Notification of Availability of Future Teacher Loans.*

§21.232. *Identification of Student Records.*

§21.233. *Preloan Interview.*

§21.234. *Payments to Student.*

§21.235. *Student Status.*

§21.236. *Period of Loans.*

§21.237. *Loan Interest.*

§21.238. *Repayment under Provisions of Public Law 89-329, the Higher Education Act of 1965, as Amended, of Loans of Deceased or Disabled Borrowers.*

§21.239. *Repayment of Loans.*

§21.240. *Cancellation of Certain Loan Repayments.*

§21.241. *Enforcement of Collections.*

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

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SUBCHAPTER L. PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

19 TAC §§21.301 - 21.325

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.301 - 21.325 concerning the

Paul Douglas Teacher Scholarship Program. Federal legislation rescinded funding for this program in 1995, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

Dr. Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Title V Part C (formerly Part D), of the Higher Education Act of 1965, as amended, which provides the Coordinating Board with the authority to adopt rules to implement the Paul Douglas Teacher Scholarship Program.

The repeal affects Title V Part C (formerly Part D), of the Higher Education Act of 1965, as amended and administered under 34 CFR Part 653.

§21.301. *Purpose.*

§21.302. *Administration.*

§21.303. *Delegation of Powers and Duties.*

§21.304. *Definitions.*

§21.305. *Scholarship.*

§21.306. *Eligible Institutions of Higher Education.*

§21.307. *Qualifications for Scholarships.*

§21.308. *Criteria for Selecting Scholars.*

§21.309. *Special Consideration.*

§21.310. *Award Amounts.*

§21.311. *Criteria for Subsequent Scholarships.*

§21.312. *Application Priority Deadlines.*

§21.313. *Notification of Availability of Paul Douglas Teacher Scholarship.*

§21.314. *Expenditure of Funds.*

§21.315. *Payments to Students.*

§21.316. *Student Status.*

§21.317. *Scholarship Conditions.*

§21.318. *Noncompliance with the Scholarship Conditions.*

§21.319. *Period of Loan.*

§21.320. *Loan Interest.*

§21.321. *Repayment of Loans.*

§21.322. *Minimum Repayment Amounts.*

§21.323. *Deferments.*

§21.324. *Enforcement of Collection.*

§21.325. *Provisions for Disability and Death.*

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

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SUBCHAPTER O. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.465 - 21.477

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.465 - 21.477 concerning the Early Childhood Care Provider Student Loan Repayment Program. No funds have been appropriated for this program since FY2005.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

The repeals relate to Texas Education Code, Chapter 61, former §§61.871 - 61.879, which no longer appear in the statute.

§21.465. *Purpose.*

§21.466. *Definitions.*

§21.467. *Priorities of Application Acceptance and Selection Criteria.*

§21.468. *Eligible Education Loan.*

§21.469. *Qualifications for Participation.*

§21.470. *Participation Agreement.*

§21.471. *Amount of Repayments and Limitations.*

§21.472. *Repayments During the Required Two-Year Service Period.*

§21.473. *Repayments Beyond the Required Two-Year Service Period.*

§21.474. *Terms of Early Childhood Care Provider Loans.*

§21.475. *Enforcement of Collection.*

§21.476. *Provisions for Disability and Death.*

§21.477. *Dissemination of Information.*

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

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SUBCHAPTER S. BORDER COUNTY DOCTORAL FACULTY EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.590 - 21.596

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§21.590 - 21.596 concerning the Border County Doctoral Faculty Education Loan Repayment Program. The intent of these amendments is to clarify the definition of eligible institution, align the description of eligible lender and eligible loans with the description used for other loan repayment program rules, and provide more information on the application process.

Section 21.590 is re-titled "Authority and Purpose" and amended to eliminate the redundant scope statement and add the words "eligible" and "Texas" to the purpose statement.

Section 21.591 regarding eligible institution is amended to state that medical and dental units are not considered eligible institutions for purposes of this program. Additionally, for institutions that are not the main campus, both the main campus and the campus where the faculty member works must be located in a Texas county that borders Mexico to qualify a faculty member for participation in the program. A definition for Board is also added.

Section 21.592 is re-titled "Application Process". The amendments to this section provide a description of the application process, including the role of the institutional presidents and/or their designees in inviting faculty to submit an application, establishing objective ranking criteria, and submitting the applications to the Board in priority order.

Section 21.593 is re-titled "Priority Applications and Ranking Criteria." This amendment suggests possible ranking criteria, mirroring criteria documented by officials at some participating institutions in recent years.

Section 21.594 is re-titled "Eligible Lender and Eligible Education Loan" and amended to align with the description that appears for this section in other state loan repayment programs.

Section 21.595 is amended to state that the faculty member must have received a doctoral degree from an institution that is accredited by a recognized accrediting agency. Subsection (b) is

shortened to state "eligible institution", which is defined. Subsection (c) clarifies that applications are submitted by faculty to institutional officials. This section's outline format is also amended to conform to that of other sections.

Section 21.596 is amended to state that the annual repayment shall be payable to the servicer(s) or holder(s) of the loan(s), in keeping with the procedure for all loan repayment programs.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these sections will be the institution's ability to recruit and retain eligible faculty.

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

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Chapter 61, §61.708, which provided the Coordinating Board with the authority to adopt rules to implement the Border County Doctoral Faculty Education Loan Repayment Program.

The amendments relate to Texas Education Code, Chapter 61, §§61.701, 61.7021, and 61.703 - 61.708.

§21.590. *Authority, Scope, and Purpose.*

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §§61.701- 61.708 [~~§61.701 through §61.708~~].

~~[(b) Scope. The rules define applicable terms and provide the conditions for eligibility and repayment of education loans for persons who have received a doctoral degree on or after September 1, 1994, from an institution of higher education and are employed as a full-time faculty member with instructional duties in an eligible institution of higher education that is located in a county that borders Mexico.]~~

(b) ~~[(e)]~~ Purpose. The purpose of these rules is to implement the Border County Doctoral Faculty Education Loan Repayment Program in order to recruit and retain persons holding a doctoral degree to become and/or remain full-time faculty with instructional duties in eligible [Texas] institutions of higher education located in Texas counties that border Mexico.

§21.591. *Definitions.*

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

(1) Eligible Institution of Higher Education--A public [or private and independent] institution as defined in the Texas Education Code, §61.003, except for medical and dental units, located in a Texas county that borders Mexico and, if it is not the main campus of the institution, whose main campus is located in a Texas county that borders Mexico. [and an out-of-state institution of higher education that is accredited by a recognized accrediting agency.]

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

(6) Board--The Texas Higher Education Coordinating Board.

§21.592. *Application Process [Dissemination of Information].*

(a) The Board shall distribute rules and application [pertinent] information regarding [about] the Border County Doctoral Faculty Education Loan Repayment Program to the presidents and/or their designees and to the personnel office at each eligible institution of higher education [located in a Texas county that borders Mexico], appropriate professional associations, and other entities.

(b) Institutional presidents and/or their designees shall establish objective criteria for ranking applications, invite eligible faculty to submit applications to them or their designees, and rank the applications in priority order according to instructions from the board.

(c) By the deadline established by the board, institutional presidents and/or their designees shall submit faculty applications to the board, ranked in priority order, and accompanied by a written description of the ranking criteria.

§21.593. *Priority Applications and Ranking Criteria [Priorities of Application Acceptance].*

(a) Acceptance of applicants will depend upon the availability of appropriated funds. Renewal applicants will be given priority over first-time applicants. ~~[Prior conditional approval shall be communicated to eligible faculty, contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period.]~~

(b) The ranking criteria established for eligible faculty who are first-time applicants may include, but are not limited to the following: length of service to the institution, ratio of income to student loan debt, total amount of student loan debt, institutional need in terms of academic disciplines, and documented excellence in job performance.

§21.594. *Eligible Lender and Eligible Education Loan.*

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate and graduate education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation.

(b) To be [An education loan that is] eligible for repayment, an education loan must [is one that]:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate or graduate education [was obtained through a lender for the purpose of attending an eligible institution of higher education];

~~[(2) is evidenced by a promissory note:]~~

~~[(A) for funds obtained through a federal or state loan program for higher education:]~~

~~[(B) with language that clearly indicates that loan proceeds must be used for direct and indirect expenses at an eligible institution; or]~~

~~[(C) for consolidating education loan:]~~

(2) ~~[(3) [is] not be in default at the time the application is received by the board; [and]~~

(3) ~~[(4) [does] not entail an [a service] obligation to provide service for loan forgiveness through another program;[-]~~

(4) not be subject to repayment through another student loan repayment program or loan forgiveness program or repayment assistance provided by the faculty member's employer at the time of application;

(5) be evident from documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the faculty member's undergraduate or graduate education, if the loan was consolidated with other loans; and

(6) not be an education loan from an insurance policy or pension plan.

§21.595. Eligible Faculty.

To be eligible for participation in the program, an applicant must:

(1) have received a doctoral degree on or after September 1, 1994, from an institution of higher education that is accredited by a recognized accrediting agency;

(2) be employed as a full-time faculty member with instructional duties in an eligible institution [of higher education that is located in a county that borders Mexico]; and

(3) submit a completed application to the institutional president or his/her designee [board, agreeing to meet the conditions of loan repayment through the program].

§21.596. Repayment of Education Loans.

Eligible education loans of qualified faculty members shall be repaid under the following conditions:

(1) the annual repayment(s) shall be made payable [eo-payable] to the servicer(s) or [faculty member and] the holder(s) of the loan(s);

(2) the annual repayment(s) shall be made upon the faculty member's completion of the service period; and

(3) the maximum annual loan repayment amount shall be \$5,000 for a period of up to 10 years.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600431

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER DD. MINORITY DOCTORAL INCENTIVE PROGRAM OF TEXAS

19 TAC §§21.970 - 21.980

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.970 - 21.980 concerning the Minority Doctoral Incentive Program of Texas. No funds have been appropriated for this program since the 2004-2005 biennium.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each

year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, §56.162, which provides the Coordinating Board with the authority to adopt rules to implement the Minority Doctoral Incentive Program of Texas.

The repeals affect Texas Education Code, §§56.161 - 56.171.

§21.970. Authority and Purpose.

§21.971. Definitions.

§21.972. Eligible Lender or Holder.

§21.973. Eligible Education Loan.

§21.974. Responsibilities of Institutional Personnel.

§21.975. Qualifications for Participation in the Program.

§21.976. Priority of Application Acceptance.

§21.977. Responsibilities and Liabilities of the Eligible Doctoral Student.

§21.978. Guarantee of Payment of Education Loans.

§21.979. Repayment of Education Loans.

§21.980. Appeals for Exceptions.

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER LL. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.2050 - 21.2056

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes the repeal of §§21.2050 - 21.2056 concerning the Early Childhood Care Provider Student Loan Repayment Program. No funds have been appropriated for this program since FY2005.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, THECB, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, charles.puls@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

The repeals relate to Texas Education Code, Chapter 61, former §§61.871 - 61.879, which no longer appear in the statute.

§21.2050. *Authority and Purpose.*

§21.2051. *Definitions.*

§21.2052. *Priorities of Application Acceptance and Selection Criteria.*

§21.2053. *Eligible Education Loan.*

§21.2054. *Qualifications for Participation.*

§21.2055. *Amount of Repayments and Limitations.*

§21.2056. *Dissemination of Information.*

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 170. PAIN MANAGEMENT

22 TAC §170.3

The Texas Medical Board (Board) proposes amendments to §170.3, concerning Minimum Requirements for the Treatment of Chronic Pain.

The amendments are related to pain management agreements.

Section 170.3(4)(C) adds new language relating to limitations on the number of physicians who may prescribe to a patient dangerous and scheduled drugs for the treatment of chronic pain. The new language now allows a covering physician acting in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services) to prescribe dangerous and scheduled drugs for the treatment of chronic pain. New language also specifies that if a patient is treated for acute chronic pain by a physician other than the physician who is party to the pain management agreement or the covering physician, that the patient must inform notify the primary or covering physician, at the next date of service, about the prescription. The rule sets out specific requirements for the content of this notification.

The amendments to paragraph (4)(D) amend the exception to the one pharmacy requirement of pain management agreements by eliminating the requirement that the designated pharmacy be out of stock of the drug prescribed, and substituting broader language involving "circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement." The amendment includes the requirement that if such circumstances apply and a prescription is filled at a pharmacy other than the designated pharmacy, the patient inform the primary or covering physician of the circumstances and the name of the pharmacy that dispensed the medication.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify the minimum requirements for pain management agreements and provide reasonable flexibility to patients subject to such agreements. A further public benefit is that issues of diversion and doctor shopping will be more effectively regulated by the Board.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with this rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 107, Texas Occupations Code.

§170.3. *Minimum Requirements for the Treatment of Chronic Pain.*

A physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met:

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

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the

physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must use a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:

(A) the physician may require laboratory tests for drug levels upon request;

(B) the physician may limit the number and frequency of prescription refills;

(C) only the [one] physician or another physician covering for the physician in compliance with Chapter 177, Subchapter E of this title (relating to Physician Call Coverage Medical Services), may [with] prescribe dangerous and scheduled drugs for the treatment of chronic pain. For any prescriptions issued for medications to treat acute or chronic pain by a person other than the physician or covering physician, the terms of the agreement must require that at or before the patient's next date of service, the patient notify the primary or covering physician about the prescription(s) issued. The terms of the agreement must require that such notice include at a minimum the name and contact information for the person who issued the prescription, the date of the prescription, and the name and quantity of the drug prescribed;

(D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, with an exception for those circumstances for which the patient has no control or responsibility, that prevent the patient from obtaining prescribed medications at the designated pharmacy under the agreement. For such circumstances, the agreement's terms must require that at or before the patient's next date of service, the patient notify the primary or covering physician of the circumstances and identify the pharmacy that dispensed the medication [unless the designated pharmacy under the agreement is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or patient presents to have the drug dispensed]; and

(E) reasons for which drug therapy may be discontinued (e.g. violation of agreement).

(5) - (7) (No change.)

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board

Earliest possible date of adoption: March 13, 2016
For further information, please call: (512) 305-7016



CHAPTER 174. TELEMEDICINE

22 TAC §174.11

The Texas Medical Board (Board) proposes amendments to §174.11, concerning On-Call Services.

The amendment to §174.11 amends and adds language to refer readers to Chapter 177 of this title (relating to Business Organizations) and newly proposed Subchapter E, concerning Physi-

cian Call Coverage Medical Services, which was proposed for amendment in the January 29, 2016, issue of the *Texas Register* (41 TexReg 766). The subchapter provides physicians guidance and sets forth the requirements relating to on-call services and agreements. The proposed amendment to relocate the substantive requirements related to the topic of "on-call" services to Chapter 177 results from the Board's meetings with stakeholders who expressed the need for more clarity with respect to the application of the rule and whether it applied to all physicians or just those physicians practicing in the area of telemedicine. The removal of the substantive requirements for "on-call" services from Chapter 174 of this title (relating to Telemedicine), and relocation of the call coverage topic to Chapter 177 of this title, will alleviate such confusion and provide more clarity as to the rules' applicability.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to improve all physicians' understanding of the rules relating to call coverage and clearly provide guidance and parameters necessary for allowing physicians to provide continuity of care to patients in Texas while protecting patient health and welfare, through the elimination of the strict rule of reciprocity and relocation.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§174.11. *On-Call [On-call] Services.*

Physicians, who ~~[are of the same specialty and provide reciprocal services; may]~~ provide on-call telemedicine medical services must meet the requirements set forth under Chapter 177, Subchapter E of this title (relating to Business Organizations and Agreements, Physician Call Coverage Medical Services) [for each other's active patients].

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

Filed with the Office of the Secretary of State on February 1, 2016.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board

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For further information, please call: (512) 305-7016

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

Introduction. The Texas Board of Nursing (Board) proposes amendments to §211.6, concerning Committees of the Board. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.1595.

Background. Section 301.1595 of the Nursing Practice Act requires the Board to adopt rules regarding the purpose, structure, and use of advisory committees. The section also enumerates additional issues that the Board must address by rule. The proposed amendments are necessary to ensure compliance with the requirements of §301.1595 and for consistency with amendments to §213.23 of this chapter (relating to Decision of the Board) that are being proposed simultaneously with this proposal and published elsewhere in this issue of the *Texas Register*.

First, the proposed amendments remove reference to the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule text. This committee ceased operation when the deferred disciplinary action pilot program ended and was scheduled to be abolished no later than January 1, 2014 by the provisions of the rule. As such, the proposed amendments eliminate the obsolete provision from the rule.

Second, the proposed amendments clarify that committee members will be appointed by the Board and that the majority of the members of a committee must be present at a meeting in order to establish a quorum.

Third, the proposed amendments reiterate the statutory requirement of §301.1595(d) that, although a Board member may serve as a liaison to a committee and report to the Board the recommendations of the committee for consideration by the Board, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Fourth, although the Board assigns topics to its committees for evaluation and recommendation, the proposed amendments make clear that committee members may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge. Further, the proposed amendments permit committee members to request and/or receive training to assist them in completing their work.

Finally, the proposed amendments include provisions that are consistent with changes that are being simultaneously proposed to §213.23 (Decision of the Board) of this chapter. These changes clarify that the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties, including consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government Code §2001.058(d-1). These proposed changes are being published elsewhere in this issue of the *Texas Register*.

Section by Section Overview. Proposed amended §211.6(b)(3) provides that the Board's Disciplinary Committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of

Administrative Hearings pursuant to Texas Government Code §2001.058(d-1).

Proposed amended §211.6(f)(1)(E) eliminates the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule.

Proposed amended §211.6(f)(2) states that members shall be appointed by the Board.

Proposed amended §211.6(f)(3) states that the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Proposed amended §211.6(f)(5) provides that each committee's work and usefulness shall be evaluated periodically.

Proposed amended §211.6(f)(6) provides that the committees will provide notice of meetings on the Secretary of State's web site to allow the public an opportunity to participate.

Proposed amended §211.6(f)(8) states that committees may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge.

Proposed amended §211.6(f)(9) requires the majority of the members of a Committee to be present at a meeting in order to establish a quorum.

Proposed amended §211.6(f)(13) states that committee members may request and/or receive training as necessary to assist them in completing their work.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that comply with statutory mandates. Further, the proposed amendments more clearly delineate the role and use of the Board's advisory committees. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §301.151 and §301.1595.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1595(a) provides that the Board may appoint advisory committees to perform the advisory functions assigned by the Board.

Section 301.1595(b) states that an advisory committee shall provide independent expertise on Board functions and policies, but may not be involved in setting Board policy.

Section 301.1595(c) states that the Board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on: the purpose, role, responsibility, and goal of an advisory committee; the size and quorum requirements for an advisory committee; the composition and representation of an advisory committee; the qualifications of advisory committee members, such as experience or area of residence; the appointment procedures for advisory committees; the terms of service for advisory committee members; the training requirements for advisory committee members, if necessary; the method the Board will use to receive public input on issues addressed by an advisory committee; and the development of Board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

Section 301.1595(d) provides that a Board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the Board. A Board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. Further, a Board member liaison is not required to attend advisory committee meetings. Finally, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Section 301.1595(e) states that to the extent of any conflict with Chapter 2110, Government Code, this section and Board rules adopted under this section control.

Cross Reference to Statute. The following statutes are affected by this proposal:

Rule §211.6: Occupations Code §301.151 and §301.1595

§211.6. *Committees of the Board.*

(a) (No change.)

(b) Eligibility and Disciplinary Committee.

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

(3) Duties and powers. The disciplinary committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, ~~and~~ administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

(4) - (5) (No change.)

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

(f) Advisory Committees. The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate or required by law.

(1) The board has established the following committees that advise the board on a continuous basis or as charged by the Board:

(A) - (D) (No change.)

~~{(E) the Deferred Disciplinary Action Pilot Program Advisory Committee (DDAPPAC) assists the Board in overseeing and evaluating the deferred disciplinary action pilot program under §213.34 of this title (relating to Deferred Disciplinary Action Pilot Program). The DDAPPAC shall be abolished when the deferred disciplinary action pilot program under §213.34 of this title comes to an end, but in no event later than January 1, 2014. The DDAPPAC is comprised of representatives from the following:}~~

~~{(i) Texas Association of Vocational Nurse Educators (TAVNE);}~~

~~{(ii) Licensed Vocational Nurses Association of Texas (LVNAT);}~~

~~{(iii) Texas League of Vocational Nurses (TLVN);}~~

~~{(iv) Texas Organization of Associate Degree Nursing (TOADN);}~~

~~{(v) Texas Organization of Baccalaureate and Graduate Nurse Educators (TOBGNE);}~~

~~{(vi) Texas Nurses Association (TNA);}~~

~~{(vii) Texas Organization of Nurse Executives (TONE);}~~

~~{(viii) Coalition for Nurses in Advanced Practice; and}~~

~~{(ix) other members approved by the Board, including members of public advocacy organizations.}~~

(2) Members shall be appointed by the Board. The Board may amend ~~the~~ committee memberships as needed.

(3) A board member or members appointed by the President of the board or the board may serve as a liaison(s) to a committee and report to the Board the recommendations of the committee for consideration by the Board. The role of a Board member liaison, however, is limited to clarifying the Board's charge and intent to the advisory committee.

(4) (No change.)

(5) Each committee's work and usefulness shall be evaluated periodically ~~annually~~.

(6) The committees will provide notice of meetings~~; as feasible,~~ on the Secretary of State's web site to allow the public an opportunity to participate.

(7) (No change.)

(8) Committees may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge. ~~[The committee may consult with the board liaison(s) to authorize the committee to investigate identified topics or issues pending the development and communication of a formal charge by the Board.]~~

(9) The majority of the members of a Committee must be present at a meeting in order to establish a quorum. Committee members will be expected to attend meetings. The chairperson has the dis-

cretion to recommend the dismissal of a member who does not regularly attend. The Board or Executive Director has the authority to approve the dismissal of a member.

(10) - (12) (No change.)

(13) Committee members may request and/or receive training as necessary to assist them in completing their work.

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600364

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

Introduction. The Texas Board of Nursing (Board) proposes amendments to §213.23, concerning Decision of the Board. The amendments are proposed under the authority of the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

Background. In September 2011, the State Office of Administrative Hearings (SOAH) adopted §155.501(d). This rule permitted SOAH, in default proceedings where notice was adequate, to dismiss a matter from its docket and remand the case to the referring agency for final disposition. During the 84th Legislative Session, the Texas Legislature enacted amendments (House Bill 2154) to the Government Code §2001.058(d-1) authorizing the dismissal and remand of default cases.

The Board has considered and resolved default dismissals from SOAH at its regularly scheduled quarterly meetings since the enactment of §155.501(d) in 2011. Since that time, the number of default dismissals has continued to increase. In addition to the consideration of default dismissals at the Board's quarterly meetings, the proposed amendments make clear that the Eligibility and Disciplinary Committee of the Board may also consider and resolve default dismissals from SOAH. This amendment is intended to increase the Board's efficiency in resolving these cases and to assist in the management of the Board's quarterly meeting agendas.

The proposed amendments also affect an individual's submission of information to the Board. Currently, the Board permits individuals to appear at its regularly scheduled quarterly meetings to address the Board prior to its deliberation and vote on a proposal for decision (PFD). In order to do so, however, the Board's current rule requires the submission of written information to the Board within certain prescribed time frames. The time frames vary, depending upon whether or not a modification is being proposed to a PFD. The proposed amendments, however, eliminate this distinction, and instead, impose a single time frame for any individual wishing to appear before the Board or submit written information for the Board's consideration regarding a PFD and/or

default dismissal from SOAH. This proposed change is intended to simplify the process for individuals and to enable more timely preparation of the Board's quarterly meeting agenda and appearance schedules.

Section by Section Overview. Proposed amended §213.23(a) provides that either the Board or the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Texas Government Code §2001.058(d-1).

Proposed amended §213.23(e) provides that parties shall have an opportunity to file written exceptions and/or briefs with the Board. Further, an individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. Additionally, an individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. The Board will not consider any requests for an oral presentation and/or any written exceptions and/or briefs submitted in violation of these requirements.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that better enable the Board to resolve contested cases in a timely and efficient manner and to manage its workload in a more orderly and efficient manner. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If

a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.463(a) states that, unless precluded by Chapter 301 or other law, the Board may dispose of a complaint by stipulation; agreed settlement; agreed order; or dismissal.

Section 301.463(b) states that an agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under Chapter 301 and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

Section 301.463(c) states that an agreed order is a public record.

Section 301.463(a) provides that the Board by rule shall adopt procedures governing informal disposition of a contested case under §2001.056, Government Code; and an informal proceeding held in compliance with §2001.054, Government Code.

Section 2001.056 states that, unless precluded by law, an informal disposition may be made of a contested case by stipulation; agreed settlement; consent order; or default.

Section 2001.058(d-1) provides that, on making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under §2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule §213.23: Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and Government Code §2001.056 and §2001.058(d-1).

§213.23. Decision of the Board.

(a) Except as to those matters expressly delegated to the executive director for ratification, either the Board or the Eligibility and Disciplinary Committee of the Board, may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

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

(e) Following the issuance of a proposal for decision or default dismissal, parties shall have an opportunity to file written exceptions and/or briefs with the Board [~~concerning a proposal for decision~~]. An opportunity shall be given to file a response to written exceptions

and/or briefs. An individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. An individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. The Board will not consider any requests for an oral presentation and/or any written exceptions and/or briefs submitted in violation of these requirements. [The following requirements govern the submission of written exceptions and/or briefs to the Board:]

{(1) Individuals wishing to file written exceptions and/or briefs with the Board, but not wishing to make an oral presentation to the Board concerning a proposal for decision: A Respondent wishing to file written exceptions and/or briefs with the Board concerning a proposal for decision must do so no later than 10 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. The Board will not consider any written exceptions and/or briefs submitted in violation of this requirement.}]

{(2) Individuals wishing to make an oral presentation to the Board concerning a proposal for decision: An individual wishing to make an oral presentation to the Board must file written exceptions and/or briefs with the Board. If no modification is proposed to the proposal for decision, an individual must file written exceptions and/or briefs with the Board at least 21 days prior to the date of the next regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. If a modification is proposed to the proposal for decision, an individual must file a written response to the proposed modification, written exceptions, and/or briefs with the Board at least 10 days prior to the date of the regularly scheduled Board meeting where the Board will deliberate on the proposal for decision. An individual will not be permitted to make an oral presentation to the Board if the individual does not comply with these requirements.}]

(f) - (l) (No change.)

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600365

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



22 TAC §213.32

Introduction. The Texas Board of Nursing (Board) proposes an amendment to §213.32, concerning Corrective Action Proceedings and Schedule of Administrative Fines. The amendment is proposed under the authority of the Occupations Code §301.151 and §301.652.

Background. In 2009, the Nursing Practice Act (NPA) was amended to grant the Board authority to resolve contested

cases through the use of corrective actions. Pursuant to the Occupations Code §301.652, a corrective action may consist of a fine, remedial education, or a combination of a fine or remedial education. Further, a corrective action is not a disciplinary action.

The Board is required, pursuant to the Health Care Quality Improvement Act of 1986 and the Social Security Act, to report disciplinary actions to the National Practitioner Data Bank (NPDB). The Board also reports disciplinary actions to other members of the Nurse Licensure Compact under the Occupations Code Chapter 304. However, because a corrective action is not a disciplinary action, the Board does not report corrective actions to NPDB or to other nursing boards.

The proposed amendment affects individuals who are practicing in Texas on a nurse licensure privilege, but who maintain their home state residence in another nurse licensure compact state. The proposed amendment clarifies that corrective actions will not be available to these individuals for the resolution of a contested case matter in Texas. The proposed amendment conforms to the Board's practice since 2009 in this regard. Although corrective actions are currently utilized for the resolution of minor practice violations, the Board has determined that offering corrective actions to individuals practicing in Texas on a nurse licensure privilege is not appropriate because this information would not be reported to other state boards of nursing who may have an interest in their licensees' conduct in Texas.

Section by Section Overview. Proposed amended §213.32(4) provides that an agreed corrective action will not be available to an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of a rule that maintains effective communication between the Board and other nursing boards in the Nurse Licensure Compact regarding the conduct of their licensees in Texas. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendment because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on March 13, 2016, to James W. Johnston, General Counsel, Texas Board of Nursing,

333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §301.151 and §301.652.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: may be a fine, remedial education, or any combination of a fine or remedial education; is not a disciplinary action under Subchapter J; and is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. Section 301.652(b) provides that the Board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

Cross Reference To Statute. The following statutes are affected by this proposal:

Rule §213.32: Occupations Code §301.151 and §301.652.

§213.32. *Corrective Action Proceedings and Schedule of Administrative Fines.*

A corrective action may be imposed by the Board as specified in the following circumstances.

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

(4) The opportunity to enter into an agreed corrective action order is at the sole discretion of the Executive Director as a condition of settlement by agreement and is not available as a result of a contested case proceeding conducted pursuant to the Government Code Chapter 2001. An agreed corrective action will not be available to an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(5) - (7) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600328

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 305-6822



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER E. PURCHASING

31 TAC §3.51

INTRODUCTION AND BACKGROUND

The General Land Office (GLO) proposes new §3.51 in Chapter 3, Subchapter E, relating to Enhanced Contract Monitoring. The proposed new §3.51 will establish a new rule for enhanced contract monitoring. This new rule proposal has been undertaken as a result of the passage of Senate Bill (SB) 20 during the 84th Texas Legislature, which amended portions of Chapter 2261 of the Texas Government Code (TGC).

SB 20 modifies Chapter 2261 of the TGC to require state agencies to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The proposed new rule sets forth the agency's procedure to meet SB 20's requirement to conduct enhanced monitoring of contracts, the factors that are to be considered, the requirement of establishing procedures to administer the monitoring, and the requirement of reports being delivered to the agency's governing body.

FISCAL IMPACTS

Anne Idsal, Chief Clerk, has determined that for each year of the first five years the new section as proposed is in effect there will be no fiscal implications for state government or local governments as a result of enforcing or administering the new section. This rule will not have any fiscal impact or affect on state or local governments as monitoring of contracts is not a new requirement. The new requirement is the identification of contracts that warrant a more in-depth level of monitoring by the GLO.

PUBLIC BENEFIT AND EMPLOYMENT IMPACT

Chief Clerk Anne Idsal has also determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from the enhanced monitoring as the proposed rule will help ensure that contracts are awarded in line with the state's contract procurement laws and administered in line with the agency's contract manager's manual.

Chief Clerk Anne Idsal has further determined that the proposed rulemaking will have no adverse local employment impact that requires an employment impact statement pursuant to the Government Code, §2001.022.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rulemaking. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on

private real property interests inasmuch as the property subject to the proposed rulemaking is owned by the state.

REQUEST FOR COMMENTS BY THE PUBLIC

To comment on the proposed new rule, please send a written comment to Mr. Walter Talley, the GLO Texas Register Liaison, at Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873. Comments may also be sent by facsimile at (512) 463-6311 or by email to walter.talley@glo.state.tx.us.

STATUTORY AUTHORITY

The new rule is proposed under of the Texas Government Code §2261.253, which requires state agencies to establish, in agency rule, a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the governing body of the agency.

STATUTORY SECTIONS AFFECTED

Chapter 2261 of the Texas Government Code is affected by the proposed new rule.

§3.51. Enhanced Contract Monitoring Program.

(a) The General Land Office (GLO) shall identify contracts that require enhanced monitoring.

(b) In determining which contracts require enhanced monitoring, the GLO shall consider factors including:

- (1) contract amount;
- (2) risk;
- (3) special circumstances of project; and
- (4) scope of goods or services provided.

(c) The GLO shall adopt procedures to administer the enhanced contract monitoring program.

(d) Enhanced contract monitoring reports shall be regularly provided to the commissioner, chief clerk, and when applicable, to the School Land Board or the Veterans Land Board.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600393

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 475-1859



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to 31 TAC §519.8, Eligible Pay Rates. Specifically, this proposed amendment changes the maximum pay rate that is eligible for reimbursement from the State Board. The current pay rate of \$15.00 per hour is being increased to \$20.00 per hour.

Mr. Kenny Zajicek, Fiscal Officer, State Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zajicek has also determined that for the first five-year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will be the possibility of improved district operations by districts being able to compete with the public workforce for qualified employees.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amendment is proposed under Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

§519.8. Eligible Pay Rates.

The State Board hereby establishes a maximum pay rate of \$20.00 [~~\$15.00~~] per hour not to exceed a maximum of 40 hours per week. With the prior approval of the State Board a district may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600442

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: March 13, 2016

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 2. LEGAL SERVICES BOND DIVISION

34 TAC §§1.51, 1.52, 1.54 - 1.56, 1.58 - 1.60

The Comptroller of Public Accounts proposes the repeal of §§1.51, concerning presentation of municipal bonds and other public securities for registration before issuance; 1.52, concerning certificates provided; 1.54, concerning registration numbers; 1.55, concerning release of bonds after registration; 1.56, concerning maintenance of transcript of proceedings for each bond issue; 1.58, concerning registration of bond ownership; 1.59, concerning conversion of form of a bond from bearer bond to registered bond and from registered bond to bearer bond and presentation for exchange; and 1.60, concerning form of registration certificates to be printed on bonds. These sections are being repealed due to a change from paper to electronic registration that has occurred over time in public security registration practices under Government Code, Chapter 1203.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the repeals will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the rules will be by removing outdated provisions from the Texas Administrative Code. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Tom Smelker, Division Director, Treasury Operations 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*.

These repeals are proposed under Government Code, §1203.026, which provides the comptroller with the authority to adopt rules relating to the comptroller's performance of registration of public securities under Chapter 1203.

The proposed repeals do not affect Government Code, Chapter 1203, Subchapters A, B, and C, §1203.001 et seq.

§1.51. Presentation of Municipal Bonds and Other Public Securities for Registration Before Issuance.

§1.52. Certificates Provided.

§1.54. Registration Numbers.

§1.55. Release of Bonds After Registration.

§1.56. Maintenance of Transcript of Proceedings for Each Bond Issue.

§1.58. Registration of Bond Ownership.

§1.59. Conversion of Form of a Bond from Bearer Bond to Registered Bond and from Registered Bond to Bearer Bond and Presentation for Exchange.

§1.60. Form of Registration Certificates To Be Printed on Bonds.

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

Filed with the Office of the Secretary of State on January 28, 2016.



CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The amendment corrects grammar in subsection (b)(2)(A)(ii) - (viii) and (x) - (xii). The amendment will update the statute cite in subsection (e)(1)(A). Additionally, the amendment will correct grammar in the itemized list of taxes under subsection (e)(1)(A). The amendment inserts a new subparagraph (B) which requires franchise tax information reports to be filed electronically pursuant to SB 1364, 84th Legislature, 2015. Subsection (i)(2)(A)(i) is amended for readability. This amendment memorializes a policy change effective for reports due on or after September 1, 2015, and edits the section to improve readability.

Tom Currah, 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. Currah 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 conforming the rule to current state statutes, and clarifying the rule's provisions. 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 Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. 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 amendments implement Tax Code, §111.0626 (Collection Procedures).

§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2, by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625.

(1) Taxpayers who have paid the comptroller a total of \$100,000 or more in a single category of payments or taxes during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current fiscal year, shall transfer all payment amounts in that category of payments or taxes during the subsequent calendar year to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies).

(2) Taxpayers who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes during the preceding state fiscal year, and who the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax [~~taxes~~];
- (iii) gas severance tax [~~taxes~~];
- (iv) oil severance tax [~~taxes~~];
- (v) franchise tax [~~taxes~~];
- (vi) gasoline tax [~~taxes~~];
- (vii) diesel fuel tax [~~taxes~~];
- (viii) hotel occupancy tax [~~taxes~~];
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts tax [~~taxes~~];
- (xi) mixed beverage sales tax [~~taxes~~]; and
- (xii) motor vehicle rental tax [~~taxes~~].

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) A taxpayer making payment using TexNet. Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted.

TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files combined tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626.

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax [taxes];
- (iii) gas severance tax [taxes];
- (iv) oil severance tax [taxes]; and
- (v) motor fuel tax [taxes].

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 must file the information report electronically.

(C) [(B)] Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1.

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6), 151.465, and 151.466; and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;

(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;

(iv) the information required by Tax Code, §151.462(b) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold;

and
(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203;

(ii) impose a civil penalty under Tax Code, §151.703(d);

(iii) impose a criminal penalty under Tax Code, §151.709; and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

(E) The requirements of this paragraph apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212, on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Except as provided by Tax Code, §111.006, information contained in the reports required by paragraphs (2), (3), and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552.

(6) The reports required by paragraphs (2), (3), and (4) of this subsection are required in addition to any other reports required by the comptroller.

(7) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063, the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax

due by electronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051, must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery [actually received] at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 475-0387



SUBCHAPTER NN. FIREWORKS TAX

34 TAC §3.1281

The Comptroller of Public Accounts proposes amendments to §3.1281, concerning fireworks tax. The amendments are proposed to implement the provisions of Senate Bill 761, 84th Legislature, 2015, which repealed the tax on fireworks effective September 1, 2015.

The section is amended by adding new subsection (a) indicating that the rule applies to periods prior to September 1, 2015. All subsequent subsections are relettered accordingly.

Relettered subsection (d) is amended to correct the title of §3.286 (Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Tom Currah, 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. Currah 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 conforming the rule to current statutes. 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 Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. 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 the repeal of Tax Code, Chapter 161 (Fireworks Tax).

§3.1281. *Fireworks Tax.*

(a) This section applies to sales made prior to September 1, 2015. Effective September 1, 2015, the fireworks tax is repealed.

(b) [(a)] Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Consignment sale--An arrangement where a consignee pays a distributor only for items that the consignee sells and returns any unsold items.

(2) Fireworks--Any composition or device that is designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation that is classified as Division 1.4G explosives by the United States Department of Transportation in 49 C.F.R. Part 173 as of September 1, 1999. Examples of fireworks include items that are commonly known as firecrackers, bottle rockets, Roman candles, and shooting stars.

(3) Retail sale--Any sale of fireworks directly to the public.

(4) Sales tax--The tax imposed by Tax Code, Chapter 151.

(c) [(b)] Imposition. A 2.0% tax is imposed on the retail sale of fireworks in Texas. The fireworks tax imposed under Tax Code, Chapter 161, is in addition to any state and local sales taxes that are due on the retail sale of fireworks.

(d) [(e)] Collection. Each seller must collect the fireworks tax from the purchaser on the total price of each retail sale of fireworks in Texas. The fireworks tax is collected in the same manner as sales tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules[; and Criminal Penalties]) for information on the collection and remittance of sales tax.

(e) [(f)] Consignment sales. For Texas tax purposes, distributors who make consignment sales of fireworks are considered the sellers of the fireworks and are responsible for reporting and remitting the sales and fireworks taxes due on all retail sales made by consignees.

(f) [(e)] Exclusions and exemptions.

(1) The following items are excluded from the fireworks tax base, but retail sales of these items may be subject to sales tax:

(A) a toy pistol, toy cane, toy gun, or other device that uses a paper or plastic cap;

(B) a model rocket or model rocket motor that is designed, sold, and used for the purpose of propelling a recoverable aero model;

(C) a propelling or expelling charge that consists of a mixture of sulfur, charcoal, and potassium nitrate;

(D) a novelty or trick noisemaker;

(E) a pyrotechnic signaling device or distress signal that is designed for marine, aviation, or highway use in an emergency situation;

(F) a fusee or railway torpedo for use by a railroad;

(G) a blank cartridge that is sold for use in a radio, television, film, or theater production, for signal or ceremonial purposes in athletic events, or for industrial purposes; or

(H) a pyrotechnic device that is sold for use by a military organization.

(2) No fireworks tax is due on a sale that is exempt from sales tax.

(3) A seller who accepts a valid and properly completed resale or exemption certificate for sales tax is not required to collect the fireworks tax. All sales that are unsupported by valid resale or exemption certificates or by other exemption documentation acceptable under the law are considered to be retail sales, and the seller will be liable for the fireworks tax on those sales.

(g) [(f)] Reports. A seller must report the fireworks tax to the comptroller on forms that the comptroller prescribes. A seller who fails to receive the correct form from the comptroller is not relieved of the responsibility for filing a fireworks tax report and for payment of the tax by the due date.

(h) [(g)] Due dates for reports and payments. A seller must report and remit fireworks tax on or before the applicable due date for the sales period as specified in this section.

(1) The due dates are:

(A) August 20 for tax collected on sales that occur during:

(i) the period that begins May 1 and ends at midnight on May 5 at a location that is not more than 100 miles from the Texas-Mexico border in a county in which the commissioners court has approved the sale of fireworks during that period; and

(ii) the period that begins on June 24 and ends at midnight on July 4; and

(B) February 20 for tax collected on sales that occur during the period that begins December 20 and ends at midnight on January 1.

(2) Reports and remittances that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(3) Reports submitted by mail must be postmarked on or before the due date to be considered timely.

(4) Reports filed electronically must be completed and submitted by 11:59 p.m., central time, on the due date to be considered timely.

(i) ~~(h)~~ Prepayment and timely filing discounts.

(1) The 1.75% sales tax prepayment discount does not apply to fireworks tax.

(2) A seller who timely files the fireworks report and pays the tax due on or before the applicable due date may retain 0.5% of the gross fireworks tax due.

(j) ~~(i)~~ Late filing of reports and payment of tax due; penalty and interest.

(1) If the tax is paid or postmarked one to 30 days after the due date, a penalty of 5.0% of the tax due is imposed.

(2) If the tax is paid or postmarked more than 30 days after the due date, a penalty of 10% of the tax due is imposed.

(3) If the tax is paid or postmarked more than 60 days after the due date, interest is also due on the late payment. Interest is applied at the applicable annual rate to the amount of the delinquent tax due, exclusive of any late penalty. The comptroller publishes the annual interest rate online at www.window.state.tx.us and by phone at 1-877-44RATE4.

(4) A late filing penalty of \$50 is imposed for each report that is not filed on or before the due date. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period. The \$50 penalty is due in addition to any other penalties assessed for the reporting period.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. JUVENILE PROBATION DEPARTMENT GENERAL STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes to repeal §§341.1 - 341.4, 341.9, 341.10, 341.20, 341.29, 341.35 - 341.41, 341.47 - 341.51, 341.65 - 341.71, and 341.80 - 341.91, relating to Juvenile Probation Department General Standards.

TJJD simultaneously proposes new §§341.100, 341.102, 341.200, 341.202, 341.300, 341.302, 341.400, 341.500, 341.502, 341.504, 341.506, 341.600, 341.602, 341.604, 341.606, 341.700, 341.702, 341.704 - 341.706, 341.708, 341.710, 341.712, 341.800, 341.802, 341.804, 341.806, 341.808, 341.810, 341.812, and 341.814, relating to General Standards for Juvenile Probation Departments.

SECTION-BY-SECTION SUMMARY

The repeal of §341.1 will allow for the content to be revised and republished as §341.100.

The repeal of §341.2 will allow for the content to be revised and republished as §341.200.

The repeal of §341.3 will allow for the content to be revised and republished as §341.202.

The repeal of §341.4 will allow for the content to be revised and republished as §341.102.

The repeal of §341.9 will allow for the content to be revised and republished as §341.300.

The repeal of §341.10 will allow for the content to be revised and republished as §341.302.

The repeal of §341.20 will allow for the content to be revised and republished as §341.502.

The repeal of §341.29 will allow for the content to be revised and republished as §341.400.

The repeal of §341.35 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.36 will allow for the content to be revised and republished as §341.500.

The repeal of §§341.37 - 341.41 will allow for the content to be revised and republished within new §341.504 and §341.506.

The repeal of §341.47 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.48 will allow for the content to be revised and republished as §341.600.

The repeal of §341.49 will allow for the content to be revised and republished as §341.602.

The repeal of §341.50 will allow for the content to be revised and republished as §341.604.

The repeal of §341.51 will allow for the content to be revised and republished as §341.606.

The repeal of §341.65 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.66 will allow for the content to be revised and republished as §341.702.

The repeal of §341.67 will allow for the content to be revised and republished as §341.704.

The repeal of §341.68 will allow for the content to be revised and republished as §341.706.

The repeal of §341.69 will allow for the content to be revised and republished as §341.708.

The repeal of §341.70 will allow for the content to be revised and republished as §341.710.

The repeal of §341.71 will allow for the content to be revised and republished as §341.712.

The repeal of §341.80 will allow for the content to be revised and consolidated with new §341.100.

The repeal of §341.81 will allow for the content to be revised and republished as §341.800.

The repeal of §341.82 will allow for the content to be revised and republished as §341.802.

The repeal of §341.83 will allow for the content to be revised and republished as §341.804.

The repeal of §341.84 will allow for the content to be revised and moved to new §341.808.

Specifically, the revised chapter will no longer require each juvenile probation officer (JPO) to receive 20 hours of training in empty-hand defense tactics before carrying a firearm in the course of the JPO's duties. New §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to specify in the department's policies and procedures the amount of required training in empty-hand defense tactics and intermediate weapons before the JPO may carry a firearm in the course of the JPO's duties. The provision in §341.84 requiring the use of force by a JPO who carries a firearm to be consistent with Chapter 9 of the Texas Penal Code will be reflected in new §341.808. Additionally, the provision in §341.84 requiring a JPO who carries a firearm to also carry an intermediate weapon will be reflected in new §341.808.

The repeal of §341.85 will allow for the content to be revised and republished as §341.806.

The repeal of §341.86 will allow for the content to be revised and republished as §341.808.

The repeal of §341.87 will allow for the content to be revised and republished as §341.810.

The repeal of §341.88 will allow for the content to be revised and republished as §341.812.

Section 341.89 is proposed for repeal to eliminate certain provisions that are redundant with other sections within the chapter. Additionally, the repeal will allow for certain provisions in §341.89 to be revised and addressed by other sections within the revised chapter. For example, the revised chapter will no longer require JPOs who carry firearms to receive 20 hours of continuing education in certain firearms-related topics every two years. However, new §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to specify in its policies and procedures the amount of required continuing education in those firearms-related topics. The repeal of §341.89 will also allow for the requirement for firearms-related training to be provided by an instructor approved by the Texas Commission on Law Enforcement to be moved to new §341.808.

Section 341.90 is proposed for repeal because it duplicates information found elsewhere in the chapter.

Section 341.91 is proposed for repeal to allow new §341.808 to address the justification for discharging a firearm and to address whether use of striking weapons is allowable. However, new §341.808 will not authorize or prohibit any specific practices in this regard. New §341.808 will require each juvenile probation department that authorizes a JPO to carry a firearm to establish in its policies and procedures the circumstances and limitations under which a JPO who carries a firearm may use force. New §341.808 will also require such policies and procedures to specify the type(s) of intermediate weapons to be used.

New §341.100 revises and republishes information currently found in §341.1. Changes include: 1) consolidating definitions throughout the chapter into one rule; 2) adding definitions of Alternative Referral Plan, Criminogenic Needs, Department, Initial Disposition, Inter-County Transfer, Intern, Juvenile, Juvenile Board, Resident, Responsivity Factors, TCOLE, Title IV-E Approved Facility, TJJJD Mental Health Screening Instrument, Transport Personnel, and Volunteer; 3) deleting the definitions of Alleged Victim, Case Plan, Case Plan Review, Courtesy Supervision, Exit Plan, Referral, On-Duty, Paper Complaint, Paper Formalized, and Substitute Care Provider; 4) changing the term Approved Physical Restraint to Approved Personal Restraint Technique and revising the definition to match existing definitions in other TAC chapters adopted by TJJJD; 5) clarifying the definition of Approved Mechanical Restraint Devices to reflect that the devices must be commercially available, removing the requirement for the juvenile board to adopt the approved mechanical restraint devices, adding Soft Restraints to the list of TJJJD-approved devices, and removing Anklets and Wristlets from the list of TJJJD-approved devices; and 6) changing the definition of Intermediate Weapons to reflect that electronic restraint devices, irritants, and impact weapons are examples of intermediate weapons, rather than the only allowable types of such weapons.

New §341.102 republishes information currently found in §341.4.

New §341.200 revises and republishes information currently found in §341.2. Changes include: 1) removing the requirement for the juvenile board to specify the responsibilities and functions of the juvenile probation department and the chief administrative officer; 2) clarifying that the required ratio of one juvenile probation officer for every 100 annual referrals is based on formal referrals; 3) clarifying that a person designated by the juvenile board (rather than the juvenile board itself) must participate in community resource coordination groups; 4) clarifying that the signs provided by TJJJD relating to complaint procedures must be posted in English and Spanish; 5) combining the items relating to research studies and experimentation and moving the combined item from §341.3 to §341.200; 6) providing more explanation regarding what constitutes prohibited experimentation; 7) clarifying that if the juvenile board designates a board member or staff member to approve research studies on behalf of the board, the designation must be in writing; and 8) adding a requirement that for juvenile boards who adopt an alternative referral plan under Texas Family Code §53.01(d), the most recent version of the plan must be submitted to TJJJD's general counsel.

New §341.202 revises and republishes information currently found in §341.3. Changes include: 1) clarifying that the requirement to establish a deferred prosecution policy applies only if the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, removing the specific reference to the \$15 maximum monthly fee, and referring to the Family

Code section that contains the monthly maximum; 2) adding a requirement for the policy on volunteers and interns to include a prohibition on having unsupervised contact with juveniles if the volunteer/intern has a criminal history that does not meet the requirements of 37 TAC Chapter 344 and removing the requirement for the policy to require the volunteer/intern sign-in log to record the names of the juveniles contacted or served; 3) clarifying that the zero-tolerance policy refers to sexual abuse as defined in 37 TAC Chapter 358 and adding that the policy must address conduct by volunteers, interns, and contractors; 4) adding a requirement for the juvenile board to establish a policy that specifies whether juveniles under age 17 who have been transferred for criminal prosecution under Family Code §54.02 may be detained in a juvenile facility pending trial; and 5) adding a requirement for the juvenile board to establish a policy that specifies whether juvenile probation officers may take a juvenile into custody and whether force is allowed in doing so. If force is allowed, the policy must address certain topics related to use of force, such as training, circumstances when force is authorized, prohibited conduct, and documentation.

New §341.300 revises and republishes information currently found in §341.9. Changes include requiring the annual review of policies and procedures to occur within the same calendar month as the previous year's review, rather than once every 365 days.

New §341.302 republishes information currently found in §341.10.

New §341.400 revises and republishes information currently found in §341.29. Changes include: 1) adding several items to the list of duties that may be performed only by certified juvenile probation officers (i.e., acting as the primary supervising officer in a collaborative supervision agreement; taking a child into custody under applicable Texas Family Code sections; serving as the designated inter-county transfer officer and performing the duties required by Texas Family Code §51.072; referring a child to a local mental health or mental retardation authority as required by Texas Family Code §54.0408; explaining to the juvenile and parent/guardian/custodian who will have access to the juvenile's record and when the record may be eligible for restricted access or sealing; and providing a written copy of the explanation); 2) clarifying that persons hired as juvenile probation officers who are not yet certified may perform the duties of a certified officer if they have completed 40 hours of training including the mandatory topics listed in 37 TAC Chapter 344 (rather than an unspecified number of training hours covering the duties currently listed in §341.29); and 3) clarifying that a non-certified officer may continue to perform duties of a certified officer as long as the application for certification has been filed by the deadline in Chapter 344.

New §341.500 revises and republishes information currently found in §341.36. Changes include: 1) clarifying that a mental health screening is not required if a licensed mental health professional completes a clinical assessment within the established time frame; and 2) clarifying that the person who administers the mental health screening instrument must have received training from TJJD or its predecessor agency or from a person who is documented to have received training from TJJD or its predecessor agency.

New §341.502 revises and republishes information currently found in §341.20. Changes include: 1) adding a requirement to complete the risk and needs assessment at least once every six months after disposition; and 2) clarifying that the risk and

needs assessment is required before each disposition in a child's case (in the event there is more than one disposition).

New §341.504 establishes basic requirements for a juvenile probation department's policies and procedures relating to case management.

New §341.506 establishes requirements for case plans. This new section significantly revises information currently found in §§341.37 - 341.41. Changes include: 1) requiring completion of the case plan within 30 days after initial disposition, rather than 60 days; 2) requiring the case plan to address relevant criminogenic need(s), goals, action steps, responsible persons, time frames, and status; 3) removing the requirement to complete signed case plan reviews every six months; 4) adding a requirement for the juvenile probation officer to document monthly discussions with the juvenile and parent/guardian/custodian regarding the juvenile's progress; 5) adding a requirement for the juvenile probation officer to document monthly updates to the status of the case plan goals and action steps; 6) adding an exemption from certain case plan requirements while an inter-county transfer request is being processed; 7) requiring documentation when the parent/guardian/custodian cannot be located or is unable or unwilling to participate in case planning; and 8) adding an exemption from all requirements of §341.506 for juveniles who receive specialized case plans under the Title IV-E foster care program or the Special Needs Diversionary Program.

New §341.600 republishes information currently found in §341.48 with minor, non-substantive wording changes.

New §341.602 republishes information currently found in §341.49 with minor, non-substantive wording changes.

New §341.604 republishes information currently found in §341.50 with minor, non-substantive wording changes.

New §341.606 revises and republishes information currently found in §341.51. Changes include narrowing backup and restoration requirements to apply only to juvenile probation departments who do not use the Juvenile Case Management System (JCMS).

New §341.700 limits Subchapter G (Restrains) to apply only to juveniles who are not residents of a secure pre-adjudication detention facility, secure post-adjudication correctional facility, or non-secure correctional facility.

New §341.702 revises and republishes information currently found in §341.66. Changes include: 1) adding transport personnel as individuals who are authorized to use restraints; and 2) clarifying that the criteria for using restraints (i.e., imminent or active self-injury, injury to others, serious property damage) and the requirement to terminate the restraint when the criteria are no longer present does not apply to restraints used during routine transportation or when a juvenile probation officer takes a juvenile into custody.

New §341.704 revises and republishes information currently found in §341.67. Changes include: 1) replacing the term face down with prone or supine position to match wording used in other TAC chapters adopted by TJJD; and 2) adding that restraints that place anything around the juvenile's neck are prohibited.

New §341.705 requires transport personnel to maintain current certification in cardiopulmonary resuscitation, first aid, and a TJJD-approved personal restraint technique.

New §341.706 revises and republishes information currently found in §341.68. Changes include: 1) adding that using mechanical restraints during routine transportation and taking a juvenile into custody are not required to be documented as restraints unless cooperation is compelled through the use of a personal restraint or the juvenile receives an injury related to the restraint event; 2) requiring that documentation of a restraint must include a narrative description of the event from each staff member who participated in the restraint; and 3) clarifying that the documentation must indicate the specific type of personal restraint hold or type of mechanical restraint applied.

New §341.708 revises and republishes information currently found in §341.69. Changes include: 1) changing the required frequency of retraining in the personal restraint technique to be once every 365 calendar days or as required by the specific restraint technique, whichever time frame is shorter (instead of once every two years); and 2) moving the requirement for juvenile probation departments to use only TJJD-approved personal restraint techniques to this section from §341.65.

New §341.710 revises and republishes information currently found in §341.70. Changes include: 1) specifying that mechanical restraint devices must have documented inspections at least once each year within the same calendar month as the previous year's inspection; 2) adding a requirement to restrict faulty or malfunctioning mechanical restraint devices from use until they are repaired; 3) adding a requirement for all maintenance of mechanical restraint equipment to adhere to the manufacturer's guidelines; 4) clarifying that mechanical restraints may not be used to secure a juvenile in a prone, supine, or lateral position with arms and hands behind his/her back and secured to his/her legs; and 5) moving the requirement for juvenile probation departments to use only TJJD-approved mechanical restraint devices to this section from §341.65.

New §341.712 revises and republishes information currently found in §341.71. Changes include deleting the provision that excludes routine transportation and taking a juvenile into custody from the requirement to document the use of mechanical restraints. That provision is now addressed in new §341.706.

New §341.800 revises and republishes information currently found in §341.81. Changes include: 1) clarifying that a juvenile probation officer is not disqualified from carrying a firearm if he/she has been found to be a designated perpetrator in a TJJD abuse, neglect, or exploitation investigation if that designation has since been overturned; and 2) removing the provision that states this subchapter does not authorize an officer to carry a firearm while not on duty. There is no longer a definition of on duty in this chapter. Instead, the chapter will now use the statutory phrase in the course of the officer's official duties when describing when an officer is authorized to carry the firearm.

New §341.802 revises and republishes information currently found in §341.82. Changes include: 1) increasing the deadline to 30 calendar days (instead of five workdays) for submitting required documents to TJJD after receiving the initial or renewal firearms proficiency certificate; and 2) adding a requirement for the juvenile probation department to include its current weapons-related policies and procedures when submitting required documents to TJJD.

New §341.804 revises and republishes information currently found in §341.83. Changes include removing the requirement for a juvenile probation officer who carries a firearm to notify TJJD if the officer is arrested for, charged with, or convicted of

any criminal offense. New §341.806 requires the chief administrative officer to notify TJJD in such cases.

New §341.806 revises and republishes information currently found in §341.85. Changes include: 1) removing the requirement for the chief administrative officer or the supervisor of an officer who carries a firearm to comply with all requirements of this subchapter. New §341.808 requires the juvenile probation department to determine any such responsibilities and address them in department policies and procedures; 2) removing the requirement for the juvenile probation department to notify the Texas Commission on Law Enforcement within 24 hours when the department rescinds its authorization for an officer to carry a firearm or when an officer who carries a firearm separates from employment; 3) clarifying that an internal investigation must be conducted whenever an officer does any of the following during the course of his/her official duties: uses an empty-hand defense tactic in an incident involving another person; draws or uses an intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident; 4) specifying that in cases where the chief administrative officer is the subject of the investigation, the juvenile board or the board's designee must conduct the investigation; 5) removing use of empty-hand defense tactics as an incident that requires the officer to be placed on administrative leave or reassigned to a no-contact position; 6) specifying that an officer must be placed on administrative leave or reassigned to a no-contact position when the officer, in the course of his/her official duties, draws or uses an intermediate weapon in an incident involving another person or draws or discharges a firearm in any incident; and 7) adding a requirement for the chief administrative officer to ensure TJJD is notified within 24 hours after the chief administrative officer learns that an officer who carries a firearm is arrested for, charged with, or convicted of a criminal offense.

New §341.808 revises and republishes information currently found in §341.86. Changes include adding that, in juvenile probation departments that authorize a juvenile probation officer to carry a firearm, the department's weapons-related policies and procedures must: 1) specify the amount of training in empty-hand defense tactics and intermediate weapons that is required before an officer may carry a firearm; 2) specify the amount of continuing education required for officers who carry a firearm; 3) specify the duties and training requirements of a chief administrative officer or direct supervisor when the direct supervisor does not carry a firearm but supervises an officer who does carry a firearm; 4) require all weapons-related training to be received from a Texas Commission on Law Enforcement-certified instructor; 5) state whether intermediate weapons are to be purchased and maintained by the department or by the officer; 6) specify whether the firearm must be fully loaded when carried or worn in the course of official duties (this replaces a requirement that it must always be fully loaded); 7) specify how the officer must carry or display his/her identifying credentials when carrying a firearm in the course of official duties (this replaces a requirement to always display them); 8) specify the type(s) of intermediate weapons to be used; 9) state the manner in which the firearm must be worn or carried (this replaces a requirement to be encased in a holster); 10) require documentation of each incident in which an officer, in the course of official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm (this replaces a general requirement to define the process for reporting use of force incidents); 11) require an officer to carry an intermediate weapon at all times while carrying a firearm;

and 12) specify the manner in which the intermediate weapon(s) must be carried.

New §341.810 revises and republishes information currently found in §341.87. Changes include specifying that reports to TJJD are required when an officer, in the course of official duties, uses an empty-hand defense tactic in an incident involving another person; draws or uses an intermediate weapon in an incident involving another person; or draws or discharges a firearm in any incident.

New §341.812 revises and republishes information currently found in §341.88. Changes include: 1) removing the requirement for juvenile probation departments to keep the Firearms Proficiency for Juvenile Probation Officers Application in the officer's personnel file; and 2) adding a requirement to keep in the officer's personnel file an acknowledgment that the officer has reviewed the department's current weapons-related policies and procedures.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the new sections and repeals are in effect, there will be no significant fiscal impact for state government as a result of enforcing or administering the sections and repeals. Mr. Meyer has determined that in very limited circumstances there will be a small fiscal impact for local governments; however, insufficient data exist to determine the scope or size of the impact.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the new and repealed sections are in effect, the public benefits anticipated as a result of administering the sections will be: 1) more effective probation case plans as a result of basing them on validated risk and needs assessments; 2) enhanced safety and clarified expectations as a result of juvenile probation departments developing local policies to address the taking of juveniles into custody; and 3) more flexibility for juvenile probation departments to develop policies and procedures regarding carrying of handguns and other weapons.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.1. Definitions.

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

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Jill Mata

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7014



SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.4

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.2. Administration.

§341.3. Policy and Procedures.

§341.4. Waiver or Variance to Standards.

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

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.9, §341.10

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.9. Policy and Procedure Manual.

§341.10. *Participation in Community Resource Coordination Groups.*

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

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SUBCHAPTER D. ASSESSMENT AND SCREENING

37 TAC §341.20

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeal is also proposed under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment.

No other statute, code, or article is affected by this proposal.

§341.20. *Risk and Needs Assessment.*

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

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SUBCHAPTER F. REQUIREMENTS FOR CERTIFIED OFFICERS

37 TAC §341.29

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.29. *Duties of Certified Juvenile Probation Officers.*

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

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SUBCHAPTER G. CASE MANAGEMENT STANDARDS

37 TAC §§341.35 - 341.41

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments.

No other statute, code, or article is affected by this proposal.

§341.35. *Definitions.*

§341.36. *Screening.*

§341.37. *Case Planning.*

§341.38. *Field Supervision.*

§341.39. *Residential Placement.*

§341.40. *Level of Supervision.*

§341.41. *Exit Plan.*

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

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SUBCHAPTER H. DATA COLLECTION STANDARDS

37 TAC §§341.47 - 341.51

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that

provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The repeals are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

No other statute, code, or article is affected by this proposal.

- §341.47. *Definitions.*
- §341.48. *Data Coordinator.*
- §341.49. *TJJD EDI Extract.*
- §341.50. *Accuracy of Data.*
- §341.51. *Security of Data.*

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

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SUBCHAPTER J. RESTRAINTS

37 TAC §§341.65 - 341.71

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

- §341.65. *Definitions.*
- §341.66. *Requirements.*
- §341.67. *Prohibitions.*
- §341.68. *Documentation.*
- §341.69. *Physical Restraint.*
- §341.70. *Mechanical Restraint.*
- §341.71. *Transporting.*

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

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SUBCHAPTER K. CARRYING OF WEAPONS

37 TAC §§341.80 - 341.91

STATUTORY AUTHORITY

The repeals are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

- §341.80. *Definitions.*
- §341.81. *Applicability and Authorization.*
- §341.82. *Documentation Requirements.*
- §341.83. *Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm.*
- §341.84. *Use of Force Continuum.*
- §341.85. *Responsibilities of Chief Juvenile Probation Officers or Other Supervising Officer.*
- §341.86. *Written Policies and Procedures.*
- §341.87. *Reporting and Investigating Use of Force Incidents.*
- §341.88. *Records.*
- §341.89. *Training and Qualification Requirements.*
- §341.90. *Disqualifying Conduct.*
- §341.91. *Prohibited Conduct.*

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

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CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §§341.100, §341.102

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments and to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

No other statute, code, or article is affected by this proposal.

§341.100. Definitions.

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

(1) Alternative Referral Plan--A procedure that deviates from the requirements of Texas Family Code §53.01(d) regarding referral of cases to the prosecutor.

(2) Approved Personal Restraint Technique ("personal restraint")--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) Approved Mechanical Restraint Devices ("mechanical restraint")--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) Ankle Cuffs--Metal 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 wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

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

(4) Case Management System--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) 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, including the juvenile probation department of a multi-county judicial district.

(6) Comprehensive Folder Edit--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) Criminogenic Needs--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) Data Coordinator--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) Department--A juvenile probation department.

(10) Draw--To unholster a weapon in preparation for use against a perceived threat.

(11) EDI Specifications--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) Field Supervision--Supervision ordered by a juvenile court in accordance with Texas Family Code §54.04(d)(1)(A) where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) Formal Referral--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) Initial Disposition--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) Inter-County Transfer--As described in Texas Family Code §51.072, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) Intern--An individual who performs services for a juvenile justice program or facility through a formal internship program that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) 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.

(20) Juvenile Board--A governing board created under Chapter 152 of the Texas Human Resources Code.

(21) Juvenile Justice Program--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated wholly or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court; and

(iii) juvenile probation departments.

(22) Resident--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(23) Residential Placement--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(24) Restraints--Personal or mechanical restraint.

(25) Responsivity Factors--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.).

(26) SRSXEdit--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(27) Supervision--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(28) TCOLE--Texas Commission on Law Enforcement.

(29) Title IV-E Approved Facility--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(30) TJJD--Texas Juvenile Justice Department.

(31) TJJD Electronic Data Interchange (EDI) Extract--An automated process to extract and submit modified case records from the department's case management system to TJJD. The extract must be completed in accordance with this chapter.

(32) TJJD Mental Health Screening Instrument--An instrument selected by TJJD to assist in identifying juveniles who may have mental health needs.

(33) Transport Personnel--An employee of a juvenile probation department, other than a juvenile supervision officer, whose primary job duty is to transport juveniles.

(34) Volunteer--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

§341.102. Waiver or Variance to Standards.

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

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

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SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.200, §341.202

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.200. Administration.

(a) Local Juvenile Probation Services Administration.

(1) For each autonomous juvenile probation department, the juvenile board must employ a chief administrative officer who meets the standards set forth in Chapter 344 of this title.

(2) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board must ensure that the juvenile probation department's policies, programs, and procedures are clearly differentiated.

(b) Referral Ratio. The juvenile probation department shall employ at least one certified juvenile probation officer for each 100 formal referrals made to the juvenile probation department annually.

(c) Participation in Community Resource Coordination Groups.

(1) A person designated by the juvenile board must participate in the system of community resource coordination groups pursuant to Texas Government Code §531.055.

(2) The chair of the juvenile board or his/her designee must serve as representative to the interagency dispute resolution process required by Government Code §531.055.

(d) Notice of Complaint Procedures.

The juvenile board must ensure the English and Spanish signs provided by TJJD relating to complaint procedures are posted in a public area of:

(1) the juvenile probation department; and

(2) any facility operated by the juvenile board or by a private entity through a contract with the juvenile board.

(e) Research Studies and Experimentation.

(1) The juvenile board must establish a policy that prohibits participation by juveniles in research that employs an experimental design to test a medical, pharmaceutical, or cosmetic product or procedure.

(2) Participation by juveniles in any other kind of research is prohibited unless:

(A) the research study is approved in writing by the juvenile board or its designee; and

(B) the juvenile board has established policies that:

(i) govern all authorized research studies;

(ii) prohibit studies that involve medically invasive procedures; and

(iii) adhere to all federal requirements governing human subjects and confidentiality.

(3) If the juvenile board authorizes a board member or staff member to approve research studies on behalf of the board, the authorization must be in writing.

(4) Approved research studies must adhere to all applicable policies of the authorizing juvenile board.

(5) Before a research study approved by the juvenile board begins, the research study must be reported to TJJD in a format prescribed by TJJD.

(6) Results of a completed study must be made available to TJJD upon request.

(f) Alternative Referral Plans. If a juvenile board adopts an alternative referral plan under Texas Family Code §53.01(d), the board must ensure the most recent version of the plan is submitted to the TJJD general counsel.

§341.202. Policies and Procedures.

(a) Personnel Policies. The juvenile board must establish written personnel policies.

(b) Department Policies. The juvenile board must establish written department policies and procedures. These policies must include, at a minimum, the following provisions, if applicable.

(1) Deferred Prosecution.

(A) If the juvenile board adopts a fee schedule for the collection of deferred prosecution fees, the board must establish a written policy that includes the following requirements.

(i) The monthly fee must be determined after obtaining a financial statement from the parent or guardian and may not exceed the maximum set by Texas Family Code §53.03.

(ii) The fee schedule must be based on total parent/guardian income.

(iii) The chief administrative officer or his/her designee must approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(B) A deferred prosecution fee may not be imposed if the juvenile board does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(2) Volunteers and Interns. If a juvenile probation department utilizes volunteers or interns, the juvenile board must establish policies for the volunteer and/or internship program that include:

(A) a description of the scope, responsibilities, and limited authority of volunteers and interns who work with the department;

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

(C) a requirement to conduct criminal history searches as described in §344.310 of this title for volunteers and interns who will have direct, unsupervised access to juveniles;

(D) a prohibition on having unsupervised contact with juveniles for volunteers and interns whose criminal history does not meet the requirements in Chapter 344 of this title;

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

(F) a requirement that volunteers and interns meet minimum professional requirements if serving in a professional capacity; and

(G) a requirement to maintain a sign-in log that documents the name of the volunteer/intern, the purpose of the visit, the date of the service, and the beginning and ending time of the service performed for the department.

(3) Zero-Tolerance for Sexual Abuse. The juvenile board must establish zero-tolerance policies and procedures regarding sexual abuse as defined in Chapter 358 of this title. The policies and procedures must:

(A) prohibit sexual abuse of juveniles under the jurisdiction of the department by department staff, volunteers, interns, and contractors;

(B) establish the actions department staff must take in response to allegations of sexual abuse and TJJD-confirmed incidents of sexual abuse; and

(C) provide for administrative disciplinary sanctions and referral for criminal prosecution.

(4) Pretrial Detention for Certain Juveniles. As required by Texas Human Resources Code §152.0015, the juvenile board must establish a policy that specifies whether a person who has been transferred for criminal prosecution under Texas Family Code §54.02 and is younger than 17 years of age may be detained in a juvenile facility pending trial.

(5) Taking Juveniles into Custody. The juvenile board must establish a policy that specifies whether juvenile probation officers may take a juvenile into custody as allowed by Texas Family Code §§52.01(a)(4), 52.01(a)(6), or 52.015.

(A) If the policy allows juvenile probation officers to take a juvenile into custody, the policy must specify whether the officers are allowed to use force in doing so.

(B) If the policy allows juvenile probation officers to use force in taking a juvenile into custody, the policy must:

(i) address prohibited conduct, circumstances under which force is authorized, and training requirements;

(ii) require each use of force to be documented, except when the only force used is the placement of mechanical restraints on the juvenile.

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

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SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.300, §341.302

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.300. Policy and Procedure Manual.

(a) The chief administrative officer must develop, maintain, and enforce a policy and procedure manual for the juvenile probation department, which must include the policies and procedures of the juvenile probation department as established by the juvenile board.

(b) The chief administrative officer must provide all employees with a copy of or access to the policy and procedure manual, review the manual no later than the last day of the calendar month of the previous year's review, maintain documentation of this review, and update the manual as necessary.

§341.302. Participation in Community Resource Coordination Groups.

The chief administrative officer or his/her designee must serve as the liaison to the local community resource coordination group pursuant to Texas Government Code §531.055.

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

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SUBCHAPTER D. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

37 TAC §341.400

STATUTORY AUTHORITY

The new section is proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.400. Duties of Certified Juvenile Probation Officers.

(a) The following duties and responsibilities may be performed only by certified juvenile probation officers, except as allowed by subsection (b) of this section:

(1) recommending a disposition in formal court proceedings;

(2) providing final approval of written social history reports;

(3) acting as the primary supervising officer for court-ordered and deferred prosecution cases;

(4) acting as the primary supervising officer in a collaborative supervision agreement under Texas Family Code §51.075;

(5) developing and implementing case plans in accordance with Subchapter E of this chapter;

(6) conducting intake interviews and preliminary investigations and making release decisions under Texas Family Code §53.01, unless another staff member is designated to do so by the juvenile board;

(7) taking a child into custody as authorized by Texas Family Code §§52.01(a)(4), 52.01(a)(6), or 52.015;

(8) servicing as the designated inter-county transfer officer and performing the duties required by Texas Family Code §51.072;

(9) referring a child to a local mental health or mental retardation authority as required by Texas Family Code §54.0408;

(10) explaining to the juvenile and to the juvenile's parent, guardian, or custodian, the following, as required by Texas Family Code §58.209:

(A) who will have access to the juvenile's record; and

(B) under what circumstances that record may be eligible for restricted access or sealing; and

(11) providing the juvenile with a written copy of the explanation in paragraph (10) of this subsection.

(b) Subject to the application deadline established in Chapter 344 of this title, an individual hired as a juvenile probation officer who is not yet certified as a juvenile probation officer may perform the duties under subsection (a) of this section if the individual has completed a minimum of 40 hours of training, which must include the mandatory topics required in Chapter 344 of this title.

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SUBCHAPTER E. CASE MANAGEMENT

37 TAC §§341.500, 341.502, 341.504, 341.506

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJJD to adopt reasonable rules that provide minimum standards for various aspects of

the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide case management standards for all probation services provided by local probation departments. Additionally, §341.500 and §341.502 are proposed under Texas Human Resources Code §221.003(e), which requires TJJD to adopt rules to ensure that youth in the juvenile justice system are assessed using a validated risk and needs assessment and also using a mental health screening instrument or clinical assessment.

No other statute, code, or article is affected by this proposal.

§341.500. Mental Health Screening.

(a) The TJJD mental health screening instrument must be completed for all juveniles who receive a formal referral to the juvenile probation department, except in the specific circumstances listed in paragraphs (1) - (2) of this subsection.

(1) A clinical assessment by a licensed mental health professional may be substituted for the TJJD mental health screening instrument if the assessment is completed within the time frames listed in subsection (b) of this section.

(2) The department is not required to complete an additional screening if the TJJD mental health screening instrument has been completed within the previous two weeks and is contained in the juvenile's case record.

(b) If the juvenile is not admitted into detention, the TJJD mental health screening instrument must be administered no later than 14 calendar days after the date of the first face-to-face contact between the juvenile and a juvenile probation officer. If the juvenile is admitted into detention, the detention facility is required under §343.404 of this title to administer the TJJD mental health screening instrument within 48 hours after admission and to send the results to the supervising juvenile probation officer.

(c) The individual administering the TJJD mental health screening instrument must have received training from:

(1) TJJD or its predecessor agency on administering the mental health screening instrument; or

(2) an individual who is documented to have received training from TJJD or its predecessor agency on administering the mental health screening instrument.

§341.502. Risk and Needs Assessment.

(a) A juvenile probation department must complete a risk and needs assessment for a juvenile:

(1) before each disposition in a juvenile's case; and

(2) at least once every six months.

(b) The risk and needs assessment instrument must be:

(1) validated; and

(2) approved or provided by TJJD.

(c) The risk and needs assessment instrument must be administered by an individual trained to administer the instrument.

§341.504. Case Management Policies and Procedures.

Each department's case management policies and procedures must:

(1) establish that individualized case management practices are based on a consideration of the following factors, at a minimum:

(A) results of the department's risk and needs assessment instrument;

(B) criminogenic needs;

(C) risk level to reoffend;

(D) responsivity factors; and

(E) involvement of the parent(s), guardian, or custodian; and

(2) require a minimum of one face-to-face contact per month with each juvenile under supervision unless otherwise noted in the case plan.

§341.506. Case Plans.

(a) A case plan must be developed for each juvenile assigned to progressive sanctions level three, four, or five, as defined in Texas Family Code Chapter 59, and for each juvenile given determinate sentence probation under Texas Family Code §54.04(q).

(b) The case plan must be completed within 30 calendar days after the date of initial disposition. The case plan must be:

(1) developed by a juvenile probation officer in coordination with the juvenile and the juvenile's parent, guardian, or custodian;

(2) signed by a juvenile probation officer, the juvenile, and the juvenile's parent, guardian, or custodian; and

(3) retained, with copies provided to:

(A) the juvenile;

(B) the juvenile's parent, guardian, or custodian; and

(C) upon placement of a juvenile in a residential placement, staff at the residential placement.

(c) The case plan must address:

(1) relevant criminogenic need(s), as determined by the department; and

(2) the following information for each criminogenic need addressed in the case plan:

(A) goal(s); and

(B) for each goal:

(i) action step(s);

(ii) person(s) responsible for completing the action step(s);

(iii) time frame for completing the action step(s); and

(iv) status of the goal;

(3) identification of relevant community services for the juvenile and the juvenile's parent(s), guardian, or custodian to access while the juvenile is under supervision and after supervision ends;

(4) facility name and phone number, if the juvenile is in a residential placement; and

(5) level of supervision.

(d) Except as noted in subsection (f) of this section, the juvenile probation officer must complete and document the following actions each calendar month after the case plan has been developed:

(1) discuss progress toward meeting case plan goals with:

(A) the juvenile;

(B) the juvenile's parent(s), guardian, or custodian; and
(C) the residential provider where the juvenile is placed,
if applicable; and

(2) update the status and progress toward meeting case plan goals and action steps.

(e) If the parent, guardian, or custodian cannot be located or is unable or unwilling to participate in developing or updating the case plan as required in subsection (b) or (d) of this section, documentation of the reason the parent, guardian, or custodian did not participate must be maintained.

(f) The requirements in subsection (d) of this section do not apply after a request for an inter-county transfer has been submitted and before the sending and receiving counties have agreed on the official start date, as described in Texas Family Code §51.072(f-1).

(g) Within 30 calendar days after the official start date for an inter-county transfer, the receiving county must:

(1) assume responsibility for the monthly updates described in subsection (d) of this section; or

(2) complete a new case plan in accordance with subsections (b) and (c) of this section.

(h) Section 341.506 does not apply to:

(1) juveniles on field supervision in departments that currently participate in Title IV-E reasonable candidacy;

(2) juveniles who have been certified or are pending certification as Title IV-E eligible; or

(3) juveniles who are receiving services under the Special Needs Diversionary Program administered by TJJD.

(i) A case plan is required in accordance with subsections (b) and (c) of this section within 30 calendar days after any of the following events:

(1) a juvenile is discharged from the Title IV-E foster care reimbursement program or is determined to be ineligible for the Title IV-E program;

(2) a juvenile is discharged from the Special Needs Diversionary Program; or

(3) a department ceases to participate in claiming Title IV-E reasonable candidate costs.

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SUBCHAPTER F. DATA COLLECTION

37 TAC §§341.600, 341.602, 341.604, 341.606

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services. The new sections are also proposed under Texas Human Resources Code §221.004(a), which requires TJJD to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments.

No other statute, code, or article is affected by this proposal.

§341.600. *Data Coordinator.*

(a) Training Requirements.

(1) The data coordinator must have a thorough understanding of TJJD's reporting requirements.

(2) The data coordinator must complete training related to data reporting provided by TJJD as required.

(b) Duties.

(1) The data coordinator is responsible for ensuring that all data submitted to TJJD by the juvenile probation department is accurate, timely, and consistent with TJJD's reporting requirements.

(2) The data coordinator must ensure that the TJJD EDI Extract is submitted to TJJD on or before the applicable due date.

§341.602. *TJJD EDI Extract.*

(a) The TJJD EDI Extract must be sent to TJJD electronically.

(b) The extract is due to TJJD no later than the tenth calendar day of each month following the reporting period.

(c) The TJJD EDI Extract data must include all data fields required by the EDI Specifications.

(d) TJJD staff must discuss any proposed changes to the specifications with juvenile probation departments' designated representatives before making substantive changes to the specifications.

§341.604. *Accuracy of Data.*

(a) The juvenile probation department must fill in all applicable data fields for each referral in the department's case management system.

(b) The juvenile probation department must run the Comprehensive Folder Edit or SRSXEdit on a monthly basis.

(c) Errors detected by the Comprehensive Folder Edit must be corrected prior to the next submission of the EDI Extract.

(d) Errors detected by TJJD must be corrected prior to the date provided by TJJD.

§341.606. *Security of Data.*

(a) Each user of the juvenile probation department's case management system must obtain a password to the system. Passwords must not be shared with department employees or other persons.

(b) The juvenile probation department must limit the number of employees who are authorized to delete information in the department's case management system.

(c) Access to the department's case management system must be removed concurrent with the termination of a user's employment.

(d) A juvenile probation department that does not use the Juvenile Case Management System (JCMS) must:

(1) establish and follow a written policy for backup and restoration procedures relating to data in its case management system; and

(2) maintain an off-site backup storage system.

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SUBCHAPTER G. RESTRAINTS

37 TAC §§341.700, 341.702, 341.704 - 341.706, 341.708, 341.710, 341.712

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.700. *Applicability.*

This subchapter applies only to juveniles who are not residents of a juvenile pre-adjudication secure detention facility, a juvenile post-adjudication secure correctional facility, or a non-secure juvenile correctional facility.

§341.702. *Requirements.*

The use of restraints is governed by the following criteria.

(1) Personal restraints may be used only by juvenile probation officers and transport personnel who are trained in the use of the approved personal restraint technique.

(2) Mechanical restraints may be used only by juvenile probation officers and transport personnel who are trained in the use of all approved mechanical restraint devices.

(3) Except during routine transportation or when a juvenile probation officer takes a juvenile into custody under Texas Family Code §52.01 or §52.015, restraints may be used only in instances of threat of imminent or active:

(A) self-injury;

(B) injury to others; or

(C) serious property damage.

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

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

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

(7) Restraints must be terminated as soon as the juvenile's behavior no longer indicates an imminent threat of self-injury, injury to others, or serious property damage, except during routine transportation or when a juvenile probation officer takes a juvenile into custody.

§341.704. *Prohibitions.*

Restraints that employ a technique listed in this section are prohibited:

(1) restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

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

(3) restraints that are intended to inflict pain;

(4) restraints that put a juvenile in a prone or supine position with sustained or excessive pressure on the back or chest cavity;

(5) restraints that put a juvenile 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 juvenile, including a procedure that places anything in, on, or over the juvenile's mouth or nose or around the juvenile's neck;

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

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

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

(10) percussive or electrical shocking devices.

§341.705. *Transport Personnel.*

Transport personnel must maintain current certification in the following topics:

(1) cardiopulmonary resuscitation (CPR);

(2) first aid; and

(3) a personal restraint technique approved by TJJD.

§341.706. *Documentation.*

(a) Restraints must be fully documented and the documentation must be maintained, except as noted in subsection (b) of this section. Written documentation regarding the use of restraints must include, at a minimum:

(1) name of the juvenile;

(2) name and title of each staff member who administered the restraint;

(3) narrative description of the restraint event from each staff member who participated in the restraint;

(4) date of the restraint;

(5) duration of each type of restraint (e.g., personal or mechanical), including notation of the time each type of restraint began and ended;

(6) location of the restraint;

(7) events and behavior that prompted the initial restraint and any continued restraint;

(8) de-escalation efforts and restraint alternatives attempted;

(9) type of restraint(s) applied, including, as applicable:

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

and (B) the type of mechanical restraint device(s) applied;

(10) any injury that occurred during the restraint.

(b) The following events are not required to be documented as a restraint, except as noted in subsection (c) of this section:

(1) using mechanical restraints during routine transportation; and

(2) a juvenile probation officer taking a juvenile into custody under Texas Family Code §52.01 or §52.015.

(c) The exception in subsection (b) of this section does not apply when:

(1) the juvenile's cooperation is compelled through the use of a personal restraint;

(2) the juvenile receives an injury in relation to the restraint event or restraint devices.

§341.708. Personal Restraint.

(a) A juvenile probation department may not use a personal restraint technique before it has been approved for use by TJJD.

(b) Staff members who are authorized to use personal restraints must be retrained in the approved personal restraint technique in accordance with the requirements of the technique or at least once every 365 calendar days, whichever time frame is shorter.

§341.710. Mechanical Restraint.

The use of mechanical restraints is governed by the following criteria.

(1) Requirements.

(A) Only approved mechanical restraint devices may be used by the juvenile probation department.

(B) Mechanical restraints must be used only in a manner consistent with their intended use.

(C) Mechanical restraint devices must be inspected at least once each year, no later than the last day of the calendar month of the previous year's inspection. The dates of the inspections must be documented.

(D) Faulty or malfunctioning devices must be restricted from use until they are repaired. Any maintenance performed must adhere to the manufacturer's guidelines.

(2) Prohibitions.

(A) Mechanical restraint devices may not be altered from the manufacturer's design.

(B) A juvenile may not be placed in a prone position while restrained in any mechanical restraint for a period of time longer than necessary to apply the restraint devices.

(C) A mechanical restraint may not be used to secure a juvenile in a prone, supine, or lateral position with the juvenile's arms and hands behind his/her back and secured to his/her legs.

(D) Mechanical restraint devices may not be secured so tightly as to interfere with circulation or so loosely as to cause chafing of the skin.

(E) Mechanical restraint devices may not be used to secure a juvenile to a stationary object.

(F) A juvenile in mechanical restraints may not participate in any physical activity.

(G) Plastic cuffs may be used only in emergency situations.

§341.712. Transporting.

(a) During transportation in a vehicle, the juvenile may not be affixed to any part of the vehicle.

(b) During transportation in a vehicle, a juvenile may not be secured to another juvenile.

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SUBCHAPTER H. CARRYING OF WEAPONS

37 TAC §§341.800, 341.802, 341.804, 341.806, 341.808, 341.810, 341.812

STATUTORY AUTHORITY

The new sections are proposed under Texas Human Resources Code §221.002(a), which requires TJJD to adopt reasonable rules that provide minimum standards for various aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services.

No other statute, code, or article is affected by this proposal.

§341.800. Applicability and Authorization.

(a) Applicability. This subchapter applies only to actively certified juvenile probation officers who are authorized to carry firearms under this subchapter.

(b) Authorization to Carry a Firearm.

(1) In accordance with §142.006 of the Texas Human Resources Code, a juvenile probation officer is authorized to carry a firearm during the course of the officer's official duties if:

(A) the juvenile probation officer has been employed for at least one year by the juvenile probation department described in subparagraph (B) of this paragraph;

(B) the chief administrative officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(C) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement (TCOLE) under §1701.259 of the Texas Occupations Code.

(2) A juvenile probation officer is disqualified from being authorized to carry a firearm during the course of the officer's official

duties if the officer has been found to be a designated perpetrator in a TJJD abuse, neglect, or exploitation investigation, unless that designation has been overturned.

(3) In accordance with §221.35 of this title, a juvenile probation officer must successfully complete TCOLE's current firearms training program for juvenile probation officers to be authorized to carry a firearm in the course of the officer's official duties.

(4) A license obtained under Chapter 411, Subchapter H, of the Texas Government Code (i.e., a concealed handgun license) does not enable a certified juvenile probation officer to carry a firearm in the course of the officer's official duties and does not satisfy, and may not be accepted in lieu of, the requirements in this subchapter.

§341.802. Documentation Requirements.

(a) Documents Required after Obtaining an Initial Firearms Proficiency Certificate. Within 30 calendar days after receiving the initial firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE; and

(2) a completed, signed, and notarized copy of TJJD's Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form, including the following required attachments:

(A) appropriate documentation that the juvenile probation officer has been subjected to a complete search of local, state, and national records to disclose any criminal record or criminal history;

(B) written documentation from each chief administrative officer who has authorized the juvenile probation officer's participation in the juvenile probation officer firearms proficiency training program that the officer has been examined by a psychologist who was selected by the current employing department and who is licensed by the Texas State Board of Examiners of Psychologists;

(C) a written declaration from the examining psychologist that the juvenile probation officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties;

(D) documentation of successful completion of TCOLE's current firearms training program for juvenile probation officers;

(E) documentation of successful completion of the amount of training specified by the department's policies and procedures in the following areas:

(i) use of an empty-hand defense tactic; and

(ii) use of an intermediate weapon; and

(F) the department's current policies and procedures described in §341.808 of this title.

(b) Documents Required after Obtaining Renewed Firearms Proficiency Certificate. Within 30 calendar days after receiving a renewal of a firearms proficiency certificate from TCOLE, the chief administrative officer must ensure the following documents are provided to TJJD:

(1) a copy of the renewed Juvenile Probation Officer Firearms Proficiency Certificate from TCOLE;

(2) a completed, signed, and notarized copy of TJJD's Renewal of Verification of Eligibility for Juvenile Probation Officer to Carry Firearm form;

(3) documentation of successful completion of the amount of continuing education specified by the department's policies and procedures relating to the use of a firearm, intermediate weapon, or empty-hand defense tactic; and

(4) the department's current policies and procedures described in §341.808 of this title.

§341.804. Responsibilities of a Juvenile Probation Officer Authorized to Carry a Firearm.

A juvenile probation officer who is authorized to carry a firearm in accordance with this subchapter must:

(1) comply with the requirements of this subchapter, the officer's department policies and procedures, and the laws of this state and of the United States;

(2) be knowledgeable of the places where firearms or other weapons are prohibited;

(3) immediately report to the chief administrative officer if the officer is arrested for, charged with, or convicted of any criminal offense;

(4) comply with all training, firearms proficiency, and certification requirements in §221.35 of this title;

(5) maintain the firearm and all authorized intermediate weapons in proper working order at all times;

(6) be responsible for the safe handling of the firearm and all authorized intermediate weapons; and

(7) store the firearm and all authorized intermediate weapons in a secure, locked location designed for secure storage of a weapon when the firearm or other weapon is not on the officer's person.

§341.806. Responsibilities of Chief Administrative Officers or Other Supervising Officers.

(a) The chief administrative officer or his/her designee must notify TJJD within 24 hours if:

(1) the department rescinds its authorization for a juvenile probation officer to carry a firearm; or

(2) an officer who is authorized to carry a firearm separates from the department.

(b) An internal investigation must be conducted for all incidents in which a juvenile probation officer, during the course of his/her official duties:

(1) uses an empty-hand defense tactic in an incident involving another person;

(2) draws or uses an intermediate weapon in an incident involving another person; or

(3) draws or discharges a firearm in any incident.

(c) The investigation described in subsection (b) of this section must be conducted by:

(1) the chief administrative officer or his/her designee; or

(2) the juvenile board or the board's designee in cases where the chief administrative officer is the subject of the investigation.

(d) A juvenile probation officer must be immediately placed on administrative leave or reassigned to a position having no contact with juveniles or the relatives of a juvenile involved in the incident

if the juvenile probation officer, while in the course of his/her official duties:

(1) draws or uses an intermediate weapon in an incident involving another person; or

(2) draws or discharges a firearm in any incident.

(e) The administrative leave or reassignment described in subsection (d) of this section must remain in effect until the conclusion of the internal investigation.

(f) The chief administrative officer must ensure that TJJD is notified if an officer who is authorized to carry a firearm is arrested for, charged with, or convicted of any criminal offense. This notification is required within 24 hours after the chief administrative officer learns of the arrest, charge, or conviction.

§341.808. Written Policies and Procedures.

Each juvenile probation department that employs a juvenile probation officer who is authorized to carry a firearm in accordance with the requirements in this subchapter must maintain and implement written policies and procedures that:

(1) define which juvenile probation officers within the department are authorized to carry firearms;

(2) specify the amount of required training hours in the following areas before a juvenile probation officer may carry a firearm in the course of the officer's duties:

(A) use of an empty-hand defense tactic; and

(B) use of at least one intermediate weapon;

(3) specify the amount of continuing education hours required every two years for an officer to continue to carry a firearm in the course of the officer's duties;

(4) require continuing education hours to be in areas that enhance the officer's skills and knowledge relating to the proficient and legal use of a firearm, empty-hand defense tactics, and intermediate weapons in the context of self-defense and defense of third parties, including the following topics, at a minimum:

(A) use of force;

(B) weapons retention; and

(C) crisis intervention;

(5) specify the duties and training requirements of the chief administrative officer or the direct supervisor of a juvenile probation officer in cases where the following circumstances exist:

(A) a juvenile probation officer is authorized to carry a firearm in the course of his/her official duties; and

(B) the direct supervisor of the juvenile probation officer does not carry a firearm in the course of his/her official duties;

(6) require all training described in this section to be received from a TCOLE-certified instructor;

(7) state whether firearms and intermediate weapons are to be purchased and maintained by the department or the individual officer;

(8) require that the firearm and intermediate weapons remain under the control of the officer authorized to carry the firearm and weapon(s);

(9) specify whether the firearm must be fully loaded when carried or worn when the officer is in the course of his/her official duties;

(10) specify how credentials identifying the officer as a certified juvenile probation officer must be carried and/or displayed while the officer is carrying a firearm in accordance with this subchapter;

(11) describe the circumstances and limitations under which the officer is justified to use force, which must be consistent with Chapter 9 of the Texas Penal Code;

(12) specify the firearms to be carried, including the type of firearm, manufacturer, model, and caliber;

(13) specify the type of ammunition authorized for use in the firearm;

(14) specify the type(s) of intermediate weapons to be used;

(15) state whether the firearm must be carried in plain view or concealed and the manner in which it must be worn or carried;

(16) require documentation of each incident in which a juvenile probation officer, while in the course of his/her official duties, uses an empty-hand defense tactic, uses an intermediate weapon, or draws or discharges a firearm;

(17) require the officer to carry an intermediate weapon at all times while the officer is carrying a firearm;

(18) specify the manner in which the intermediate weapon(s) must be carried;

(19) define the process for rescinding or suspending the authorization to carry a firearm;

(20) prohibit the consumption of alcohol while carrying a firearm or intermediate weapon;

(21) define the process for conducting an internal investigation when required by §341.806(b) of this title;

(22) require that a juvenile probation officer be placed on administrative leave or be reassigned to a position having no contact with juveniles or relatives of the juvenile involved in the incident when required by §341.806(d) of this title.

§341.810. Reporting Use of Force Incidents to TJJD and Law Enforcement.

(a) The chief administrative officer or his/her designee must report to TJJD each incident in which a juvenile probation officer, during the course of his/her official duties:

(1) uses an empty-hand defense tactic in an incident involving another person;

(2) draws or uses an intermediate weapon in an incident involving another person; or

(3) draws or discharges a firearm in any incident.

(b) The initial report must be made to TJJD immediately, but no later than four hours after the conclusion of the use of force incident.

(c) The initial report must be made using the toll-free number designated by TJJD.

(d) Within 24 hours after the report by phone, the Juvenile Probation Officer Use of Force Incident Report form must be submitted to TJJD via fax or e-mail.

(e) The chief administrative officer or his/her designee must report to local law enforcement any discharge of a firearm by a juvenile probation officer immediately, but no later than one hour after the time of discharge.

§341.812. Records.

(a) The personnel file of each juvenile probation officer authorized to carry a firearm in accordance with this subchapter must contain a copy of the:

(1) PID Assignment (TCOLE C-1 form);

(2) results of criminal history checks conducted pursuant to the requirements of this subchapter;

(3) Licensee Psychological and Emotional Health Declaration (TCOLE L-3 form);

(4) proof of annual firearms proficiency;

(5) verification of successful completion of TCOLE's firearms training program for juvenile probation officers; and

(6) acknowledgment that the officer has reviewed the department's current policies and procedures specified in §341.808 of this title.

(b) Juvenile probation departments must allow TCOLE, other law enforcement agencies, and TJJD access to records pertaining to firearms and use of force incidents for monitoring and investigation purposes.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600428

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 490-7014



CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER D. SECURE POST- ADJUDICATION CORRECTIONAL FACILITY STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes to amend §343.616, concerning Content of Resident Records, and §343.688, concerning Residential Case Plan Coordination.

TJJD simultaneously proposes to repeal §343.690, concerning Residential Case Plan Review.

SECTION-BY-SECTION SUMMARY

The amended §343.616 will remove references to the case plan and case plan review from the list of documents that must be included in each resident's record. These documents will no longer be required in post-adjudication facilities as a result of proposed changes in Chapter 341 of this title.

The amended §343.688 will no longer require facility staff to complete an initial case plan for each resident upon admission to a secure post-adjudication facility. This amendment corresponds

with changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. The revised Chapter 341 will require the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a secure post-adjudication facility. The amended §343.688 will instead require the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

The repeal of §343.690 is proposed due to corresponding changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. Post-Adjudication facilities will no longer be required to complete 90-day case plan reviews. The revised Chapter 341 will require the supervising juvenile probation officer to complete monthly status and progress updates, which will encompass any time a youth may spend in a post-adjudication facility.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the sections are in effect, there is no significant fiscal impact for state or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the amended and repealed sections are in effect, the public benefits anticipated as a result of administering the sections will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time in a secure placement.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

37 TAC §343.616, §343.688

STATUTORY AUTHORITY

The amended sections are proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

No other statute, code, or article is affected by this proposal.

§343.616. *Content of Resident Records.*

Each resident's record shall include the following:

- (1) delinquent history;
- (2) inventory of cash and property surrendered;

- (3) list of approved visitors;
- (4) name of the assigned probation officer;
- (5) behavioral record, including any special incidents, discipline, or grievances;
- (6) progress reports~~;~~ including the resident's case plan as required in §343.688 of this title and case plan review as required in §343.690 of this title~~;~~ and
- (7) final release or transfer report.

§343.688. *[Residential] Case Plan Coordination.*

The facility administrator shall ensure that:

(1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews, as described in §341.506 of this title;

(2) a staff member who is knowledgeable about the resident's progress in the facility's programming:

(A) participates in monthly status and progress reviews with the juvenile probation officer; and

(B) provides a monthly written summary of the resident's progress in the facility's programming to the juvenile probation officer; and

(3) documentation of the actions required in paragraphs (1) and (2) of this section is maintained in the resident's file.

{(a) The initial case plan shall be completed no later than 30 calendar days from the resident's date of placement.}

{(b) The case plan shall contain documentation acknowledging that the plan was developed in consultation with the resident; the resident's parent, legal guardian, or custodian; and the supervising juvenile probation officer.}

{(c) The case plan shall contain specific goals for at least the following nine domains:}

- {(1) medical and dental;}
- {(2) safety and security;}
- {(3) recreational;}
- {(4) educational;}
- {(5) mental and behavioral health;}
- {(6) relationship;}
- {(7) socialization;}
- {(8) permanency; and}
- {(9) parent and child participation.}

{(d) The case plan shall be signed by the resident; the resident's parent, legal guardian, or custodian; the facility's designee; and the supervising juvenile probation officer. If the parent, legal guardian, or custodian refuses to participate or sign the case plan or the facility's designee cannot locate the person, the facility's designee shall document this in writing in the resident's case plan.}

{(e) The date of the facility designee's signature on the case plan shall be the case plan completion date.}

{(f) The case plan shall be retained in the resident's case file with documentation verifying that copies were provided to the resident; the resident's parent, legal guardian, or custodian; and the supervising juvenile probation officer.}

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600439

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 490-7014



37 TAC §343.690

STATUTORY AUTHORITY

The repeal is proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile post-adjudication secure correctional facilities.

No other statute, code, or article is affected by this proposal.

§343.690. *Residential Case Plan Review.*

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600438

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 490-7014



CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

SUBCHAPTER F. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §355.654

The Texas Juvenile Justice Department (TJJD) proposes to amend §355.654, concerning Residential Case Plan and Case Plan Review.

SECTION-BY-SECTION SUMMARY

The amended section will require the facility administrator to ensure: 1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews; 2) a staff member who is knowledgeable about the resident's progress in facility programming participates in the monthly reviews with the juvenile probation officer and provides a written monthly summary of the resident's progress in facility programming; and 3) documentation of these monthly activities is maintained in the resident's file.

This amendment corresponds with changes in Chapter 341 of this title, which are also proposed in this issue of the *Texas Register*. The revised Chapter 341 will require the supervising juvenile probation officer to maintain a juvenile's case plan throughout the duration of the juvenile's time on probation, including time spent in a non-secure facility.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the section is in effect, there is no significant fiscal impact for state or local governments as a result of enforcing or administering the section.

PUBLIC BENEFIT/COSTS

James Williams, Senior Director of Probation and Community Services, has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of administering the section will be enhanced continuity of care and reduced duplication of effort through the use of one case plan for a juvenile's entire time on probation, including time in a non-secure placement.

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

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §221.002(a), which authorizes TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile non-secure correctional facilities.

No other statute, code, or article is affected by this proposal.

§355.654. *[Residential] Case Plan Coordination [and Case Plan Review]*.

The facility administrator shall ensure that: [A case plan shall be completed and reviewed for every adjudicated youth in the facility in accordance with requirements of §341.37 and §341.39 of this title.]

(1) the resident is made available to the juvenile probation officer to participate in monthly status and progress reviews, as described in §341.506 of this title; and

(2) a staff member who is knowledgeable about the resident's progress in the facility's programming:

(A) participates in monthly status and progress reviews with the juvenile probation officer; and

(B) provides a monthly written summary of the resident's progress in the facility's programming to the juvenile probation officer; and

(3) documentation of the actions required in paragraphs (1) and (2) of this section is maintained in the resident's file.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600440

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 490-7014

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER G. HIGHWAY IMPROVEMENT CONTRACT SANCTIONS

43 TAC §§9.102, 9.107, 9.111, 9.113, 9.114

The Texas Department of Transportation (department) proposes amendments to §§9.102, 9.107, 9.111, 9.113, and 9.114, concerning Highway Improvement Contract Sanctions.

EXPLANATION OF PROPOSED AMENDMENTS

The legislature and department policy have declared that it is the department's duty to: (1) promote the health, safety, welfare, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems.

By statute, the department awards highway improvement contracts to the lowest qualified bidder (Transportation Code, §223.0041). Contractors that acquire work and then do not advance the work in a timely manner negatively impact the traveling public and business along the construction corridor. There are many reasons that contribute to contractors' schedules not being met; some of these reasons are outside of the contractor's control. The amendments provided under these rules allow the department to take action against a contractor whose schedules are not being met due to factors that are under its control. This rule is not applicable to projects awarded prior to its effective date.

Amendments to §9.102, Definitions, delete the definition of "affiliated entity" because the definition has proven too vague to be helpful in imposing sanctions on affiliates. The amendments re-designate the paragraphs of this section accordingly. A new substantive provision for determining affiliated entities for the purposes of Chapter 9, Subchapter G, is added in §9.113.

Amendments to §9.107, Grounds for Sanctions, adds a new ground for which sanctions may be imposed. Under the new provision, a sanction may be imposed if the department determines, using the criteria specified in the provision, that a contractor fails to timely complete a project.

Amendments to §9.111, Application of Sanction, add to the chart in Figure: 43 TAC §9.111(c) the descriptions of various sanctions that may be imposed by the executive director for a contractor's failure to timely complete projects under contract, as determined under §9.107(b).

Amendments to §9.113, Indirect Sanction on an Affiliated Entity, add a new provision to be used to determine if entities are affiliated for the purposes of Chapter 9, Subchapter G. To ensure conformity between Subchapters B and G of Chapter 9, the new provision refers to the criteria provided under 43 TAC §9.12(d) for determining the affiliation of two or entities. The provision is added at the beginning of the section, as new subsection (a); the existing subsections are re-designated accordingly, with an amendment to a cross reference to reflect the re-designation of existing subsection (c).

Amendments to §9.114, Lessening or Removal of Sanction, change a reference to a subsection in §9.113 from §9.113(b) to §9.113(c) to reflect the re-designation of subsections within that section, as described above.

FISCAL NOTE

Benjamin H. Asher, Interim Chief Financial Officer, has determined that for each of the first five years in which the amendments 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.

Tracy D. Cain, P.E., Director, Construction Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Cain 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 will be a lessened administrative overhead and improved enforcement efforts by the department, making enforcement of sanctions more transparent to the public and predictable to sign owners. 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 §§9.102, 9.107, 9.111, 9.113, and 9.114 may be submitted to Rule Comments, 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 "Sanction Rules." The deadline for receipt of comments is 5:00 p.m. on March 14, 2016. 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.

CROSS REFERENCE TO STATUTE

None.

§9.102. Definitions.

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

~~[(1) Affiliated entity--An entity, regardless of when formed, that has the same or similar management, ownership, or principal employees as the sanctioned or suspended contractor.]~~

~~(1) [(2)] Assistant executive director--An assistant executive director of the Texas Department of Transportation.~~

~~(2) [(3)] Commission--The Texas Transportation Commission.~~

~~(3) [(4)] Contractor--An entity that is eligible to bid on a highway improvement contract or that functions or seeks to function as a subcontractor under a highway improvement contract or as a supplier of materials or equipment to be used in the construction or maintenance of a part of the state highway system.~~

~~(4) [(5)] Debarment--Disqualification of a contractor from entering into an agreement with a state or federal agency.~~

~~(5) [(6)] Department--The Texas Department of Transportation.~~

~~(6) [(7)] Executive director--The executive director of the Texas Department of Transportation.~~

~~(7) [(8)] Highway improvement contract--A contract entered under Transportation Code, Chapter 223, Subchapter A for the construction, reconstruction, or maintenance of a segment of the state highway system, or for the construction or maintenance of a building or other facility appurtenant to a building.~~

~~(8) [(9)] Reprimand--A written warning issued by the department that documents an act or omission committed by a contractor.~~

~~(9) [(10)] Sanction--A consequence imposed on a contractor for failure to comply with this subchapter including suspension, reprimand, prohibition against participation in a specified agreement, or debarment.~~

~~(10) [(11)] Suspension--Immediate, temporary disqualification of a contractor from entering into or attempting to enter into an agreement with the department.~~

§9.107. Grounds for Sanction.

~~(a) Sanctions may be imposed under this section for:~~

~~(1) failure to execute a highway improvement contract after a bid is awarded, unless the contractor honors a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);~~

~~(2) the rejection by the commission of two or more bids by the contractor during the 36-month period preceding the month in which the determination is being made because of contractor error;~~

~~(3) the department's declaration of a contractor in default on a highway improvement contract; ~~or~~~~

~~(4) violation of §10.101 of this title (relating to Required Conduct); ~~or~~;~~

~~(5) failure to timely complete projects under contract.~~

~~(b) For purposes of subsection (a)(5) of this section, a contractor fails to timely complete a project if the district engineer of the district in which the project is located determines that:~~

~~(1) the contractor:~~

~~(A) has not completed the project within the time allowed under the contract, as adjusted by all applicable change orders; ~~or~~~~

~~(B) has used more than 80 percent of the time allocated for the project, as adjusted by all applicable change orders, and the~~

percent of allocated time used divided by the percent of the contract completed, both as adjusted by all applicable change orders, is greater than 1.2; and

(2) the contractor is more than 10 percent behind on all of its other contracted department projects, as adjusted by all applicable change orders.

§9.111. Application of Sanction.

(a) The executive director, at the executive director's sole discretion, may impose a sanction that is less severe, but not more severe, than the sanction recommended under subsection (c) of this section.

(b) If a contractor commits multiple violations arising out of separate occurrences, the executive director may impose multiple sanctions in accordance with subsection (c) of this section.

(c) Figure 43 TAC §9.111(c) sets forth guidelines for application of a sanction by assigning, for specific violations of §9.107 of this subchapter (relating to Grounds for Sanction), the sanctions available to the executive director as described in §9.110(a) of this subchapter (relating to Available Sanctions), taking into consideration the factors described in §9.110(b) of this subchapter.

Figure: 43 TAC §9.111(c)

[Figure: 43 TAC §9.111(e)]

§9.113. Indirect Sanction on an Affiliated Entity.

(a) For the purposes of this subchapter, an entity is an affiliated entity of a contractor if the entity and contractor satisfy any of the affiliation criteria provided under §9.12(d)(1) of this chapter. In addition to those affiliation criteria, the department, in making a determination of affiliation, may consider:

(1) the frequency of transactions between the entities; and

(2) the extent to which the entities share equipment, personnel, office space, and finances.

(b) [(a)] A sanction imposed on a contractor under this subchapter will also be imposed as an indirect sanction on an affiliated entity of the contractor.

(c) [(b)] The affiliated entity will receive notice of the indirect sanction that will:

(1) state the sanction and the period of the sanction, if applicable;

(2) summarize the facts and circumstances underlying the sanction;

(3) explain how the sanction was selected, using §9.111(c) of this subchapter (relating to Application of Sanction) as a basis for explanation;

(4) if applicable, inform the affiliated entity of the imposition of a suspension under §9.108(d) of this subchapter (relating to Procedure); and

(5) state that the affiliated entity may appeal the indirect sanction in accordance with subsection (d) [(e)] of this section.

(d) [(e)] An affiliated entity, in accordance with this subsection, may petition the executive director for an informal hearing on the imposition of an indirect sanction or suspension that is imposed on the affiliated entity solely because of its status as an affiliated entity.

(1) Not later than the 30th day after the date of receipt of the written request, the executive director will hold an informal hearing with the affiliated entity to discuss the relationship associated with the affiliation.

(2) Within 15 days after the date the informal hearing is held, the department will conduct a review to determine the affiliation of the entities. The review will include, but is not limited to, consideration of the entities':

(A) intercompany transactions;

(B) equipment;

(C) personnel;

(D) office space;

(E) finances; and

(F) other affiliation criteria.

(3) The executive director will consider the evidence presented and inform the affiliated entity in writing within 30 days of the informal hearing of the final determination to continue or lift the indirect sanction or suspension.

(4) The executive director may grant an exception to the indirect sanction only if the department finds that the operations and control of an affiliated entity affected by an indirect sanction are independent from the directly sanctioned entity.

(5) The granting of a sanction or suspension exception does not remove the affiliation classification between the affected business entities.

(6) The department may conduct follow-up reviews and may recommend that the executive director revoke the exception if the department determines that the affiliated entities are no longer independent.

(e) [(d)] If the executive director does not grant or revoke an exception and determines to continue an indirect sanction or suspension, the affiliated entity may request the opportunity for a hearing before the commission at a regularly scheduled open meeting.

(1) The commission may consider oral presentations and written documents presented by the department and interested parties. The chair will set the hearing and the amount of time allowed for presentation.

(2) The commission's determination of the appeal will be adopted by minute order and reflected in the minutes of the meeting.

(3) The executive director will issue a final order on the indirect sanction based on the commission's determination.

§9.114. Lessening or Removal of Sanction.

(a) A contractor or affiliated entity may request the reduction or removal of a sanction imposed under this subchapter by delivering to the executive director the request in writing and written documentation in support of the request demonstrating changes in the circumstances that were described in the notice of sanction under §9.109 or §9.113(c) [(§9.113(b))] of this subchapter (relating to Notice of Sanction and Indirect Sanction on an Affiliated Entity, respectively).

(b) The executive director, at the executive director's sole discretion, may decide to reduce or remove the sanction. The executive director will send a written notice of the decision to the contractor or affiliated entity.

(c) The executive director will consider not more than one request under this section during any 12-month period.

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

Filed with the Office of the Secretary of State on January 29,
2016.

TRD-201600397

Joanne Wright

Deputy General Counsel

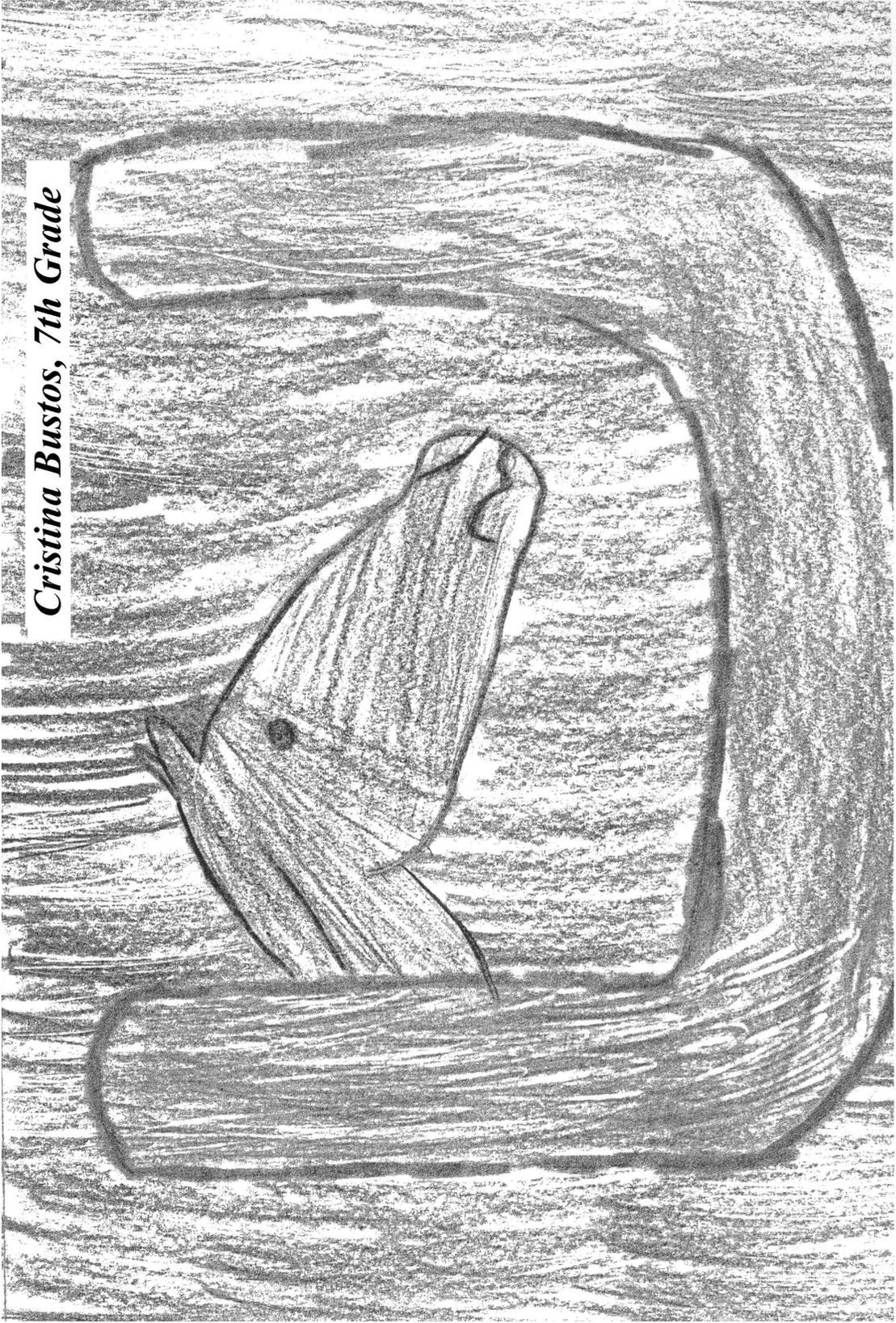
Texas Department of Transportation

Earliest possible date of adoption: March 13, 2016

For further information, please call: (512) 463-8630



Cristina Bustos, 7th Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES

1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, 163.69

The State Office of Administrative Hearings (SOAH) adopts the repeal of Chapter 163, §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67, and 163.69. The repeal is adopted without changes to the proposal as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7947) and will not be republished.

The existing chapter has been developed to provide a uniform set of procedural rules to be followed in arbitration proceedings for certain enforcement actions of the Texas Department of Aging and Disability Services at SOAH. Repeal of the existing rules will allow the simultaneous adoption of new rules, which were concurrently proposed, that remain uniform in application but that are clearer, updated, and easier to use.

No comments to the repeal were received during the 30-day comment period.

The repeal is adopted under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The repeal affects Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32.

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

Filed with the Office of the Secretary of State on January 28, 2016.

TRD-201600376

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Effective date: February 17, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 475-1276



CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES REGARDING CONVALESCENT AND NURSING HOMES

The State Office of Administrative Hearings (SOAH) adopts new Chapter 163, Arbitration Procedures for Certain Enforcement Actions of the Department of Aging and Disability Services (DADS) Regarding Convalescent and Nursing Homes, consisting of Subchapter A, §§163.1, 163.3, and 163.5, concerning general information; Subchapter B, §§163.51, 163.53, 163.55, 163.57, and 163.59, concerning election and initiation of arbitration; Subchapter C, §163.101, concerning filing and service of documents; Subchapter D, §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161, concerning selection of arbitrator and costs; Subchapter E, §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235, concerning arbitration proceedings; and Subchapter F, §§163.251, 163.253, and 163.255, concerning arbitration order. Subchapter B, §163.53; Subchapter D, §163.155; Subchapter E, §163.227 and §163.235; and Subchapter F, §163.251 are adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7948). Subchapter A, §§163.1, 163.3, and 163.5; Subchapter B, §§163.51, 163.55, 163.57, and 163.59; Subchapter C, §163.101; Subchapter D, §§163.151, 163.153, 163.157, 163.159, and 163.161; Subchapter E, §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.229, 163.231, and 163.233; and Subchapter F, §163.253 and §163.255 are adopted without changes to the proposed text and will not be republished.

The new chapter is being adopted to update and reorganize the chapter for ease of reference and use.

New Subchapter A is entitled General Information and contains §§163.1, 163.3, and 163.5. These sections set out SOAH's rules concerning definitions; construction of this chapter; and other SOAH rules of procedure. No changes have been made to this subchapter as proposed.

New Subchapter B is entitled Election and Initiation of Arbitration and contains §§163.51, 163.53, 163.55, 163.57, and 163.59. These sections set out SOAH's rules concerning opportunity to elect arbitration; notice of election of arbitration; initiation of arbitration; jurisdictional challenges; and changes of claim. Section 163.53 is adopted with changes. The changes are nonsubstantive. In §163.53(d)(1) the parenthetical language "(relating to Opportunity to Elect Arbitration)" was determined to be unnecessary and deleted.

New Subchapter C is entitled Filing and Service of Documents and contains §163.101. This section sets out SOAH's rule concerning filing and service of documents. No changes have been made to this subchapter as proposed.

New Subchapter D is entitled Selection of Arbitrator and Costs and contains §§163.151, 163.153, 163.155, 163.157, 163.159, and 163.161. These sections set out SOAH's rules concerning selection of arbitrator; notice to and acceptance of appointment by arbitrator who is not a SOAH judge; vacancies; qualifications of arbitrators; duties of the arbitrator; and cost of arbitration. Section 163.155 is adopted with changes. The changes are non-substantive. In §163.155 the parenthetical language "(relating to Selection of Arbitrator)" was determined to be unnecessary and deleted.

New Subchapter E is entitled Arbitration Proceedings and contains §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, and 163.235. These sections set out SOAH's rules concerning exchange and filing of information; preliminary conference; discovery; stenographic record; electronic record; interpreters; communication of parties with arbitrator; date, time, and place of hearing; representation; attendance required; public hearings and confidential material; order of proceedings; control of proceedings; evidence; witnesses; exclusion of witnesses; evidence by affidavit; and evidence filed after the hearing. Section 163.227 and §163.235 are adopted with changes. The changes are nonsubstantive. In §163.227(c) the parenthetical language "(relating to Discovery)" was determined to be unnecessary and deleted. In §163.235 the parenthetical language "(relating to Filing and Service of Documents)" was determined to be unnecessary and deleted.

New Subchapter F is entitled Arbitration Order and contains §§163.251, 163.253, and 163.255. These sections set out SOAH's rules concerning the order; effect of the order; and clerical error. Section 163.251 is adopted with changes. The changes are nonsubstantive. In §163.251(a) the parenthetical language "(relating to Opportunity to Elect Arbitration)" was determined to be unnecessary and deleted.

No comments were received during the 30-day comment period.

SUBCHAPTER A. GENERAL INFORMATION

1 TAC §§163.1, 163.3, 163.5

Statutory Authority

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration

procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

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

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SUBCHAPTER B. ELECTION AND INITIATION OF ARBITRATION

1 TAC §§163.51, 163.53, 163.55, 163.57, 163.59

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.53. Notice of Election of Arbitration.

(a) Pursuant to Code §242.252(b), in an enforcement lawsuit filed in court:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the court in which the lawsuit is pending and sending copies to the office of the attorney general and to DADS or its designee.

(A) The notice of election must be filed no later than the tenth day after the date on which the answer is due or the date on which the answer is filed with the court, whichever is earlier.

(B) If a civil penalty is requested by an amended or supplemental pleading in a lawsuit, the affected facility must file its notice of election of arbitration not later than the tenth day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(C) If the election of arbitration is challenged, the parties shall seek a prompt ruling from the court on the challenge. If a court finds SOAH has jurisdiction to conduct an arbitration, the Health and Human Services Appeal Division shall immediately file the court's

order and the notice of election of arbitration at SOAH and request the arbitration be processed in the usual manner.

(2) DADS may elect arbitration by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under paragraph (1) of this subsection.

(b) In an administrative enforcement proceeding originally docketed at SOAH:

(1) An affected facility may elect arbitration by filing a notice of election to arbitrate with the docket clerk at SOAH no later than the tenth day after receiving notice of hearing that complies with the requirements of the Administrative Procedure Act. A copy of this election shall be sent to DADS's representative of record in the relevant action and to DADS or its designee.

(2) DADS may elect arbitration under this chapter by filing a notice of election with the docket clerk at SOAH no later than the date that the facility may elect arbitration under paragraph (1) of this subsection and sending a copy of the notice of election to the facility's representative of record in the relevant action.

(c) The date of filing shall be the date affixed upon a notice of election by a date-stamp utilized by the docket clerk at the court for judicial proceedings, or by the docket clerk of SOAH for administrative proceedings.

(d) The notice of election shall include a written statement that contains:

(1) the nature of the action that is being submitted to arbitration, as listed in this Subchapter, §163.51(a);

(2) a brief description of the factual and/or legal controversy, including an estimate of the amount of any penalties sought;

(3) an estimate of the length of the arbitration hearing on the merits and the extensiveness of the record necessary to determine the matter;

(4) the remedy sought;

(5) a statement that the facility has not been the subject of an arbitration order within the previous five years;

(6) any special information that should be considered in selecting an arbitrator;

(7) if a hearing location other than Austin is requested, an explanation for requesting that location;

(8) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration; and

(9) a statement that arbitration is not otherwise prohibited by the Code.

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

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SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §163.101

The new section is adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new section affects Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

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

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SUBCHAPTER D. SELECTION OF ARBITRATOR AND COSTS

1 TAC §§163.151, 163.153, 163.155, 163.157, 163.159, 163.161

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.155. *Vacancies.*

If for any reason an appointed arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to the chief judge, declare the office vacant. The chief judge may fill a vacancy by

appointing a SOAH arbitrator. Objections for cause to the appointed arbitrator shall be filed in accordance with this Subchapter, §163.151(d). During the period of a vacancy, the chief judge may rule on pending matters, including dispositive motions.

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SUBCHAPTER E. ARBITRATION PROCEEDINGS

1 TAC §§163.201, 163.203, 163.205, 163.207, 163.209, 163.211, 163.213, 163.215, 163.217, 163.219, 163.221, 163.223, 163.225, 163.227, 163.229, 163.231, 163.233, 163.235

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.227. Evidence.

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedies Code, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under this Subchapter, §163.205.

§163.235. Evidence Filed After the Hearing.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, all parties shall be afforded an opportunity to examine such documents or other evi-

dence. Such materials shall be served as provided in Subchapter C of this Chapter, §163.101.

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

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SUBCHAPTER F. ARBITRATION ORDER

1 TAC §§163.251, 163.253, 163.255

The new sections are adopted under Health and Safety Code, §242.253, which requires SOAH to adopt rules for arbitration procedures after consulting with DADS; Government Code, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and Government Code, §2003.050, which authorizes SOAH to establish procedural rules for its hearings.

The new sections affect Health and Safety Code, Chapter 242, and Government Code, Chapters 2001 and 2003 and Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected.

§163.251. Order.

(a) The arbitrator may enter any order consistent with state and federal law applicable to a dispute described in Subchapter B of this Chapter, §163.51.

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and DADS or its designee and send a copy to the parties.

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

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TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, concerning Single Family HOME Program, Subchapter A, General Guidance, §23.2, Definitions; Subchapter C, Homeowner Rehabilitation Assistance, §23.32, Homeowner Rehabilitation Assistance ("HRA") Administrative Requirements; Subchapter D, Homebuyer Assistance Program, §23.41, Homebuyer Assistance ("HBA") Program Requirements, and §23.42, HBA Administrative Requirements; Subchapter F, Tenant-Based Rental Assistance Program, §23.62, Tenant-Based Rental Assistance ("TBRA") Administrative Requirements; and Subchapter G, Single Family Development Program, §23.72, Single Family Development ("SFD") Administrative Requirements, without changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8424).

REASONED JUSTIFICATION: The purpose of amending the rules is that the Department finds that the amendments will increase efficiency and effectiveness of the Single Family HOME Program.

The Department accepted public comment between November 28, 2015, and December 28, 2015. Comments regarding the amended sections were accepted in writing and by fax. No comments were received concerning the proposed amendments.

The Board approved the final order adopting the amendments on January 28, 2016.

SUBCHAPTER A. GENERAL GUIDANCE
10 TAC §23.2

STATUTORY AUTHORITY: The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

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

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2975



SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE PROGRAM
10 TAC §23.32

STATUTORY AUTHORITY: The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

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

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

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SUBCHAPTER D. HOMEBUYER ASSISTANCE PROGRAM
10 TAC §23.41, §23.42

STATUTORY AUTHORITY: The amended sections are adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

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

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

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SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.62

STATUTORY AUTHORITY: The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

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

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

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SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT PROGRAM

10 TAC §23.72

STATUTORY AUTHORITY: The amended section is adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4) which authorizes the Department to adopt rules.

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

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

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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §23.51, §23.52

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 23, concerning Single Family HOME Program, Subchapter E, Contract for Deed Program, §23.51, Contract for Deed ("CFD") Program Requirements, and §23.52, CFD Administrative Requirement, with changes to the proposed text as published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8430). The changes to the proposed amendment are title changes to the name of the activity under Subchapter E from Contract for Deed Conversion ("CFDC") to Contract for Deed ("CFD") Program to align with a change made during the 84th legislative session regarding the title conversion process.

REASONED JUSTIFICATION: The purpose of amending the rules is that the Department finds that the proposed amendments will increase efficiency and effectiveness of the Single Family HOME Program.

The Board approved the final order adopting the amendments on January 28, 2016.

The Department accepted public comment between November 28, 2015, and December 28, 2015. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the proposed amendments.

STATUTORY AUTHORITY: The amended sections are adopted pursuant to the authority of Texas Government Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

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

§23.51. *Contract for Deed (CFD) Program Requirements.*

(a) Eligible activities are limited to:

(1) acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 60 percent (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.

(e) The Department will require a first lien position.

(f) Direct Project Costs, exclusive of Match funds, are limited to:

(1) refinance, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$78 per square foot or \$85,000, or for Households of five or more Persons the lesser of \$78 per square foot or \$90,000;

(3) replacement with an energy efficient MHU: \$75,000; and

(4) rehabilitation that is not Reconstruction: \$40,000.

(g) In addition to the Direct Project Costs allowable under subsection (d) of this section, a sum not to exceed \$5,000 may be used to pay for any of the following:

(1) necessary environmental mitigation as identified during the Environmental review process; or

(2) homeowner requests for accessibility features.

(h) Project Soft Costs are limited to:

(1) acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$9,000 per housing unit;

(3) replacement with an MHU: no more than \$3,500 per housing unit; and

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

(i) Funds for administrative costs are limited to no more than 4 percent of the Direct Project Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Project Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet §92.25 1(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows;

Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(4) be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this Activity must meet the requirements of Chapters 20 and 21 of this title and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.52. *Contract for Deed (CFD) Administrative Requirements.*

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) head of Household name and address of housing unit for which assistance is being requested;

(2) a budget that includes the amount of Project funds specifying the acquisition costs, construction costs, Soft Costs and administrative costs requested, a maximum of 5 percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and Soft Costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) verification of environmental clearance;

(4) a copy of the Household's intake application on a form prescribed by the Department;

(5) certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) identification of Lead-Based Paint (LBP);

(8) for housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(9) if applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) appraisal which includes post rehabilitation or reconstruction improvements for Projects involving construction;

(11) a title commitment to issue a title policy not older than thirty (30) days when submitted that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) in the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded contract for deed and a current payoff statement; and

(15) any other documentation necessary to evidence that the Project meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) for construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least forty (40) days after the date of construction completion;

(2) if applicable, up to 50 percent of Project funds for a Project may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned,

duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) the request for funds for administrative costs must be proportionate to the amount of Direct Project Costs requested or already disbursed;

(8) table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of 10 percent of hard construction costs for retainage. Retainage will be held until at least forty (40) days after completion of construction;

(10) for final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation; and

(11) the final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

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

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: November 27, 2015

For further information, please call: (512) 475-2975



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.6

The Texas Medical Board (Board) adopts an amendment to §165.6, concerning Medical Records Regarding an Abortion on an Unemancipated Minor, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7358). The rule will not be republished.

The amendment is made in accordance with House Bill 3994, enacted by the 84th Legislature. House Bill 3994 makes changes to the Family Code section related to notice and consent for abortions performed on minors that include specific recordkeeping requirements related to information that must be maintained in the medical records of the physician performing the abortion, necessitating the amendments that are discussed below.

The amendment to §165.6 changes language in subsection (b)(4) so that a physician who performs an abortion on an unemancipated minor during a medical emergency is required to execute an affidavit explaining the specific nature of the medical emergency that necessitated the immediate abortion and include a copy of the affidavit in the minor patient's file. Other language under subsection (b)(4) is deleted, as it was made redundant by HB 3994's changes.

Further, language is added to subsection (c) requiring a physician's duty to maintain in the minor's medical record a return receipt of the required written notice from the physician who performed an abortion on the minor under emergency circumstances without the opportunity to obtain consent, to the parents or guardians of the minor. The amendments to subsection (c) also require that if the notice was delivered "undeliverable", the physician is required to maintain a copy of the notice itself.

Finally, the amendment adds language to subsection (d) establishing specific requirements for a physician to show due diligence in determining any woman on whom the physician performs an abortion has reached the age of majority or has had the disabilities of a minority removed, and establishes the requirements of showing "due diligence", tracking the language of HB 3994.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also adopted under the authority of HB 3994, 84th Leg. (2015).

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §§187.35, 187.37, 187.38, 187.61, 187.86, 187.87, 187.88 and 187.89, concerning Procedural Rules, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7369). The rules will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the proposed rules at a meeting held on August 10, 2015. The stakeholder comments were incorporated into the proposed rules.

The amendments to §187.35, relating to Presentation of Proposal for Decision, revise subsection (a)'s provisions related to notice requirements, to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.37, relating to Final Decisions and Orders, revise provisions related to notice and deadline requirements in order to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.38, relating to Motions for Rehearing, revise provisions related to notice and deadline requirements in order to comport with changes made to the Administrative Procedure Act by SB 1267, 84th Legislature, R.S. (2015).

The amendments to §187.61, relating to Ancillary Proceeding, clarify the Medical Board meets the exception in §2001.054(c-1) of Texas Government Code related to filing requirements for certain proceedings.

The amendments to §187.86, relating to Scope, revise language in order to correct a reference to the title of 28 TAC §21.5010.

The amendments to §187.87, relating to Definitions, revise definitions for a facility-based physician to include an assistant surgeon, in accordance with changes made by SB 481, 84th Legislature, R.S. (2015). Other changes are made to correct references to the title of 28 TAC §21.5010.

The amendment to §187.88, relating to Complaint Process and Resolution, represents general cleanup to the rule.

The amendments to §187.89, relating to Notice of Availability of Mandatory Mediation, revise language related to the notice required in a billing statement for certain facility-based physicians, in accordance with changes made by SB 481 84th Legislature, Regular Session (2015).

Summary of Written Comments Received

The Board received one public written comment from the Texas Medical Association (TMA). No one appeared to testify at the public hearing held on December 4, 2015, regarding the proposed amendments to Chapter 187.

TMA Comment:

TMA commented on proposed amendments made to §§187.86 - 187.89. TMA expressed general support and no opposition to the proposed amendments. However, TMA expressed concerns with existing rule language - not proposed for amendment - related to the definitions of "facility" and "bad faith mediation" and recommended that certain changes be adopted related to such existing language.

Board Response:

The Board appreciates TMA's comments and its general support expressed for the adopted amendments. The Board declines to adopt the amendments with TMA's recommended changes, however, as such changes would represent substantive rule amendments requiring public notice and comment. The Board will continue to review and consider the issues brought forth by TMA regarding the rules under §§187.86 - 187.89.

SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

22 TAC §§187.35, 187.37, 187.38

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

22 TAC §187.61

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

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

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Executive Director

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SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION

22 TAC §§187.86 - 187.89

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are further authorized by SB 1267 and SB 481, 84th Legislature, Regular Session (2015).

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

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Executive Director

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CHAPTER 189. COMPLIANCE PROGRAM

22 TAC §189.16

The Texas Medical Board (Board) adopts new §189.16, concerning Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7373). The rule will not be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the proposed rule at a meeting held on August 10, 2015. The stakeholder comments were incorporated into the proposed rules.

The new rule provides that a monitoring, proctoring, or supervising physician/professional ("monitor") may recommend that a probationer complete a competency evaluation, requires that such a recommendation be reviewed and approved by the Disciplinary Process and Review Committee (DPRC) prior to enforcing the recommendation, and sets forth a process that will apply in the cases in which the DPRC Chair approves such a recommendation. The rule provides that the Board may take further appropriate action based upon the results of the competency evaluation or the probationer's failure to comply with procedures related to the competency evaluation.

SUMMARY OF WRITTEN COMMENTS RECEIVED

The Board received public written comments from the Texas Medical Association ("TMA") and an individual. No one appeared to testify at the public hearing held on December 4, 2015, regarding §189.16.

TMA Comment:

TMA opposed the new rule, asserting that prior to a competency evaluation being required, a probationer should be afforded an Informal Settlement Conference/Show Compliance ("ISC") procedure on the issue of whether a probationer should be required to complete such a competency evaluation, and if not an ISC, at a minimum an opportunity to respond to the chart monitor's recommendation for a competency evaluation. TMA also recommended making changes to the title so that it references a "competency evaluation" rather than a competency "assessment", and asserts that the references to the "monitor" made in §189.16 are inconsistent with a definition of "monitoring physician" found under §189.2(15).

Board Response:

The Board agrees that a probationer should have an opportunity to respond to the chart monitor's recommendations made based upon a review of the probationer's medical records and/or practice. This is indeed the process in place for all chart monitoring recommendations made. All probationers are afforded the opportunity to respond to a chart monitor's specific recommendations made during each reporting cycle, and this process will be applied to the Disciplinary Process and Review Committee Chair's review of a chart monitor's recommendation that a probationer complete a competency evaluation. The DPRC Chair will have access to, along with all other materials related to the chart monitor's recommendation, the probationer's responses made to the recommendation, and will take that information into consideration when determining whether the chart monitor's recommendation should be approved.

The Board disagrees that an ISC is warranted for such an issue, however, and believes that a review completed by the DPRC Chair will provide appropriate due process to the affected probationer on the issue of whether a competency evaluation should be completed, as the DPRC Chair will have access to all relevant documents and the probationer's responses made to the chart monitor's recommendation, and therefore will have a complete understanding of all the relevant circumstances and will be able to make a well-informed decision.

The Board also disagrees that the rule's title referring to a competency "assessment" rather than an evaluation will lead to confusion. The two terms are interchangeable and synonymous.

The Board further disagrees that it is inconsistent to include under the rule non-physician professionals approved by the Board to act as monitors for probationers in addition to monitoring physicians. Probationers, which include other licensee-types than physicians, may be monitored by other types of professionals approved by the Board to act as monitors, depending on the nature of the monitoring. Such non-physician professionals will be in certain cases qualified to make such recommendations for a competency evaluation. Therefore, using only the term "monitoring physician" under the rule would result in an erroneous exclusion of professionals other than physicians who act as monitors for the Board from being authorized to make recommendations for competency evaluations, and would hamper the Board's ability to adequately and timely protect the public when faced with a situation in which a non-physician probationer shows possible signs of poor competency in his or her practice area. Therefore, the Board declines to adopt the amendments with the recommended changes.

Individual Comment:

The individual opposed the rule, claiming that the rule did not afford a probationer the opportunity to respond to the chart monitor's recommendation prior to the DPRC Chair review and that due process requires at a minimum an ISC on the issue. The individual further asserted that the "potential competency evaluation programs are typically subjective in their competency assessments and there is also no appeal available from their evaluations," and that respondents in board disciplinary cases will be less likely to agree to such a process as a result of the rule.

Board Response:

The Board disagrees with the comments. First, all probationers are afforded the opportunity to respond to a chart monitor's specific recommendations made during each reporting cycle, and this same process will be applied to the Disciplinary Process and Review Committee Chair's review of a chart monitor's recommendation that a probationer complete a competency evaluation. The DPRC Chair will have access to, along with all other materials related to the chart monitor's recommendation, the probationer's responses made to the recommendation, and will take that information into consideration when determining whether the chart monitor's recommendation should be approved.

The Board disagrees that an ISC is warranted for such an issue and believes that a review completed by the DPRC Chair will provide appropriate due process to the affected probationer on the issue of whether a competency evaluation should be completed, as the DPRC Chair will have access to all relevant documents, including the probationer's responses made to the chart monitor's recommendation, and therefore will have a complete understanding of all the relevant circumstances and will be able to make a well-informed decision.

The Board disagrees that this rule will result in respondents being less likely to agree to a chart monitoring term. In the Board's experience, chart monitoring recommendations for competency evaluations are not commonly made. However, such recommendations, when made, require that the Board put into place a procedure that will allow the Board to adequately protect the public while providing probationers appropriate due process on the issue so as to prevent unwarranted evaluations from being required.

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new rule is also adopted under the authority of Texas Occupations Code Chapter 164, including: §§164.001; 164.002; 164.010; 164.059; and 164.101.

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

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Mari Robinson, J.D.

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.3, regarding Qualifying Continuing Competence Activities, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8719).

The amendment to 22 TAC §341.3 corrects a discrepancy between Board rule and Board adopted policy for approving a specialty examination in paragraph (5)(A), allows the Board to consider partial credit for mentoring a resident/fellow who rotates through several facilities with separate mentors in paragraph (5)(D), and adds credit for item writers for American Board of Physical Therapy Specialties (ABPTS) examinations in paragraph (6)(D).

No comments were received regarding the proposed changes.

Statutory authority: The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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Proposal publication date: December 4, 2015

For further information, please call: (512) 305-6900

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22 TAC §341.6

The Texas Board of Physical Therapy Examiners adopts an amendment to §341.6, regarding License Restoration, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8720).

The amendment to 22 TAC §341.6 adds military service member and military veterans as qualifying for expediting the restoration of a license per SB 1307, which passed during the 84th Legislature (2015).

No comments were received regarding the proposed changes.

Statutory Authority: The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, 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.

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER L. PERMANENCY PLANNING

40 TAC §700.1210, §700.1212

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §700.1210 and §700.1212 without changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7991).

The justification for the new rules is to implement Senate Bill (SB) 206, enacted during the 84th Regular Session of the Texas Legislature, made many changes to Texas law in order to improve casework, streamline and clarify DFPS' statute, and give the agency flexibility to implement changes in progress through CPS Transformation. SB 206 repealed certain prescriptive statutes in order to allow DFPS and its external partners to implement best practice amid changing circumstances and current business need. Of relevance to this rule, the Legislature repealed portions of §263.009 of the Texas Family Code, which went into relatively extensive detail regarding the frequency and conduct of permanency planning meetings for children in the conservatorship of the agency. Permanency planning meetings are multidisciplinary gatherings that target the achievement of a permanent exit from DFPS' conservatorship. Prior to being amended by SB 206, §263.009 repeated verbatim DFPS policy regarding the frequency of permanency planning meetings. Rather than continue at the same level of prescriptiveness, the legislature directed the Executive Commissioner, on DFPS' behalf, to adopt in rule a schedule for the meetings "that is designed to allow the child to exit the managing conservatorship of the department safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child."

DFPS worked with stakeholders to develop a rule that reflects events or trigger points that would generally make a permanency planning meeting appropriate. Rather than adopting a schedule that would cause staff to "work to deadline" rather than the ul-

timate goals of the case, the rule recognizes events that may necessitate a permanency planning meeting--while also recognizing that DFPS must implement the law within existing agency resources.

New §700.1210: (1) defines "permanency planning meeting"; (2) specifies the purposes of the meetings, which is ultimately to identify the child's permanency goal and determine what is necessary to achieving it; (3) clarifies that except as otherwise permitted in law, a child's goal should involve a permanently responsible person or family; and (4) reiterates that permanency planning meetings are governed by §263.009, Texas Family Code.

New §700.1212 provides that, to the greatest extent possible, permanency planning meetings should be conducted as necessary to achieve safe and timely permanency, including at the following points: (1) to develop the initial family plan of service and initial visitation plan; (2) prior to scheduled permanency hearings; (3) following a significant update to the child's permanency goal; and (4) following a final order and as necessary for a youth who is 16 or over and has a permanency goal of another planned permanent living arrangement (which does not involve a legally responsible person or family).

The sections will function by clarifying the goals and timing of the permanency planning process in a fashion that affords sufficient flexibility to adjust for current understanding of best practice.

No comments were received regarding adoption of the sections.

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement §263.009 of the Texas Family Code, as amended by SB 206, 84th Texas Legislature.

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

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TRD-201600408

Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3238



CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.273, 745.351, 745.8605, 745.8933, 745.8951; the repeal of §745.8920 and §745.9015;

and new §§745.9025 - 745.9029, without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7992).

The justification of the amendments, repeals and new sections are to implement Senate Bills (SB) 1307 and 807 and House Bill (HB) 2070 that were passed by the 84th Texas Legislature in 2015.

Licensing is amending Subchapters D, Application Process; L, Remedial Actions; and N, Administrator Licensing, to clarify that a general residential operation that applies to provide trafficking victim services is exempt from any public notice and hearing requirements (in accordance with HB 2070, which added Human Resources Code (HRC), §42.0462), including: (1) requiring a general residential operation that is exempt from the public notice and hearing requirements during the application process to begin providing trafficking victim services during the initial permit period before being eligible for a full permit; and (2) allowing remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process, but the operation never provides or ceases to provide trafficking victim services. (Remedial action would not be necessary if the operation surrendered its permit or withdrew its application, as applicable, so that it could satisfy the public hearing requirements that apply to operations that do not provide trafficking victim services.)

Licensing is repealing definitions in Subchapter A, Precedence and Definitions, and rules in Subchapter N that relate to applicants for an administrator's license who have a military background, which includes military members, military veterans, and military spouses; and proposing a new Division 5 in Subchapter N, Military Members, Military Spouses, and Military Veterans, so that all rules relating to applicants for an administrator's license who have a military background are in one place. The new sections will (in accordance with SB 1307 and SB 807, which amended Chapter 55 of the Occupations Code) do the following: (1) redefine "military member," "military veteran", and "military spouse"; (2) require DFPS to waive examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas; (3) exempt military members, including those living in Texas, from a penalty for failing to renew a license in a timely manner because the individual was serving as a military member; (4) give military members two additional years to complete the renewal requirements for an administrator's license; (5) provide a military member or military veteran an alternative licensing application process for an administrator's license; and (6) provide a military member, military veteran, or military spouse an expedited licensing application process for an administrator's license.

A summary of the changes follows:

Section 745.21 is amended to remove the definitions of persons with a military background so that those definitions can be placed in a new Division 5 in Subchapter N.

Section 745.273 is amended to exempt a general residential operation that applies to provide trafficking victim services from having to comply with public notice and hearing requirements. HRC §42.0462 (added by HB 2070) provides this exemption.

Section 745.351 is amended to require a general residential operation with an exemption from public notice and hearing require-

ments to provide trafficking victim services during the initial permit period before it is eligible for a full permit.

Section 745.8605 is amended to allow remedial action to be taken against a general residential operation if the operation was exempt from the public notice and hearing requirements during the application process and trafficking victim services were never provided or are no longer being provided.

Section 745.8920 is repealed because the content of the rule is being moved to §745.9026 in new Division 5 in Subchapter N.

Section 745.8933 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background and moved to §745.9027 in new Division 5 in Subchapter N.

Section 745.8951 is amended to delete the content in this rule that pertains to applicants for an administrator's license with a military background because the content is being moved to §745.9028 in new Division 5 in Subchapter N.

Section 745.9015 is repealed because the content of the rule is being moved to §745.9029 in new Division 5 in Subchapter N.

New §745.9025 defines a "military member," "military spouse," and "military veteran" to be consistent with Occupations Code §55.001 as amended by SB 1307.

New §745.9026 incorporates content from §745.8920, which is being repealed. In accordance with Occupations Code §55.004 and §55.009 (as amended by SB 807), this rule also: (1) provides a military member or military veteran an alternative licensing application process for an administrator's license; and (2) waives examination and application fees for an applicant who is a military member, military veteran, or military spouse whose military service, training, or education generally meets all of the requirements for the license or who presently holds a license in another jurisdiction with requirements that are substantially equivalent to those in Texas.

New §745.9027 incorporates and slightly modifies the content from current §745.8933 to provide consistency in the type of documentation a military member, military veteran, or military spouse would need to submit in order to receive special consideration during the application process.

New §745.9028 incorporates content from current §745.8951 that expedites the application process for military spouses. This rule also expedites the application process for all military members and military veterans to be consistent with Occupations Code §55.005 as amended by SB 1307.

New §745.9029 incorporates content from §745.9015, which is being repealed. In accordance with Occupations Code §55.002 and §55.003 (as amended by SB 1307), this rule also: (1) exempts military members, including those living in Texas, from a penalty for failing to renew an administrator's license in a timely manner because the individual was serving as a military member; and (2) gives military members two additional years of time to complete the renewal requirements for an administrator's license.

The sections will function by being in compliance with Occupations Code, Chapter 55 and HRC, §42.0462 and §43.005.

No comments were received regarding adoption of the sections.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

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TRD-201600410

Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-5559



SUBCHAPTER D. APPLICATION PROCESS

DIVISION 4. PUBLIC NOTICE AND HEARING

REQUIREMENTS FOR RESIDENTIAL

CHILD-CARE OPERATIONS

40 TAC §745.273

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559



DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §745.351

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 438-5559



SUBCHAPTER L. REMEDIAL ACTIONS DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

40 TAC §745.8605

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.0462, which was added by HB 2070, as well as HRC §42.042(a), DFPS's general rule-making authority for Chapter 42, HRC.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600414
Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-5559



SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

40 TAC §745.8920

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600415
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2016
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For further information, please call: (512) 438-5559



DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8933

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600418

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §745.8951

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600421

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.9015

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600425

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

40 TAC §§745.9025 - 745.9029

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Occupations Code, Chapter 55, which was amended by SB 807 and SB 1307. Additionally, HRC §43.005 allows DFPS to make rules to administer the requirements of Chapter 43, HRC, which governs licenses for administrators.

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

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600432

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: March 1, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-5559



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

43 TAC §§9.81, 9.83, 9.85, 9.87, 9.89

The Texas Department of Transportation (department) adopts amendments to §9.81, Definitions, §9.83, Notice and Letter of Interest, §9.85, Evaluation, §9.87, Selection, and §9.89, Qualification Requirements for Appraisers, concerning Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services. The amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89 are adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8011) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department adopts changes to the rules for real estate appraisal service and right of way acquisition service providers to address the increasing need for professionalism, timeliness, cost effectiveness, and transparency in the department's contracting with professional real estate appraisers and right of way acquisition service providers.

Amendments to §9.81, Definitions, modify and clarify the definition of a professional real estate appraiser by deleting the term "licensed" and adding "certified by the Texas Appraiser Licensing and Certification Board." Real estate appraisers are regulated in

Texas under the Texas Appraiser Licensing and Certification Act, Occupations Code, Chapter 1103. A state certification carries a higher level of appraisal authority than a state license. A definition of "department-certified appraiser" has been added to clarify that in addition to carrying a state certification, an appraiser must also qualify for a department certification which requires additional experience beyond the issuance of the state certification. Definitions have also been added to distinguish the appraisal authority of a state-certified general appraiser and a state-certified residential appraiser. The general appraisal state certification carries the authority to appraise all types of real property, while the residential appraisal state certification carries the authority to appraise only 1 - 4 unit residential properties.

Amendments to §9.83, Notice and Letter of Intent, and §9.85, Evaluation, replace the language referencing a "precertified" appraiser with "department-certified" appraiser. This provides clarity in the difference in a state certification and department certification. Section 9.85(c) expressly provides that to be selected for a contract an appraiser must be a department-certified appraiser.

Amendments to §9.87, Selection, increase the total right of way acquisition service provider contract amount from \$2 million to \$4 million for a contract issued to provide services in a single district of the department. Contracts for right of way acquisition service providers do not carry a guarantee of work, but the artificial \$2 million cap does not provide the capacity for providers to complete work authorizations on complex right of way projects, particularly with the increasing construction letting schedule throughout the state. The increase will provide a more timely and efficient business process as opposed to having to use multiple service providers on a single project in order to meet the constraints of the obsolete \$2 million contract cap. The amendments also reflect the current style of expressing dollar amounts of more than \$1 million.

Amendments to §9.89, Qualification Requirements for Appraisers, delete, add, and clarify language for requirements that must be met by eligible individual real estate appraisers. Language was deleted that specified types of properties that demonstrate experience as it is not a comprehensive list and creates ambiguity. New language has been added that provides flexibility in the list of property types that can be used for qualifying experience. Again, the language referencing a "precertified" appraiser has been replaced by "department-certified" appraiser. The term "licensed" appraiser was deleted as it is a level of appraisal authority substantially below the state certification that is needed to perform complex appraisal assignment for parcels subject to eminent domain. Additional clarifying language has been added that specifies that an appraiser's experience for department certification must be demonstrated in a period after state certification is awarded. Language has been added that specifically states that a copy of the appraiser's state certification must be included in the application for department certification. Language was deleted in reference to a precertification being required every five years and has been replaced with language that will make the termination of the department certification the same date as the termination of the appraiser's individual state certification. Having the same date for the state certification and the department certification will eliminate confusion and provide administrative efficiency to both the regulated appraisal industry and the department.

COMMENTS

No comments were received regarding the amendments to §§9.81, 9.83, 9.85, 9.87, and 9.89.

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

Government Code, Chapter 2254, and Occupations Code, Chapter 1103.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600398

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: February 18, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 463-8630



CHAPTER 30. AVIATION

SUBCHAPTER F. METEOROLOGICAL EVALUATION TOWERS

43 TAC §§30.501 - 30.503

The Texas Department of Transportation (department) adopts new §§30.501 - 30.503, concerning Meteorological Evaluation Towers. The new sections are adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8015) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

The increasing prevalence of meteorological evaluation towers (METs), which are used to measure wind speed and direction to identify locations for future wind turbines, has caused concern for the National Transportation Safety Board and the Federal Aviation Administration. Senate Bill 505, 84th Legislature, Regular Session, added new Transportation Code, §21.071, which establishes painting and marking requirements for certain METs, and requires the department to adopt rules requiring a person who owns, operates, or erects a MET to provide notice to the department of the existence of or intent to erect a tower and to register the tower with the department. The department is developing a web-based notice, registration, and reporting tool that will be available to owners and operators of METs, as well as other interested parties that need to know the location of such towers.

New Subchapter F is titled "Meteorological Evaluation Towers" to accurately reflect the subject matter of the subchapter.

New §30.501, Purpose, describes the purpose of the subchapter, which is to set out the procedures for notice and registration of METs in accordance with Transportation Code, §21.071.

New §30.502, Definitions, defines various terms used in the new subchapter, which are consistent with Transportation Code, §21.071.

New §30.503, Notice and Registration, describes the method, timeframe, and type of information required for providing notice of the intent to erect a MET, as well as registration of such a tower.

New subsection (a) provides that a person who intends to erect a MET shall provide notice of that intention to the department by submitting the appropriate form through the department's Internet website. The notice must be submitted no later than the 30th day before the day that erection of the tower begins. This notification deadline will allow the department to disseminate pertinent information through the web-based tool prior to the construction of the tower.

New subsection (b) sets out the information required to complete the notice form, including: the name, address, and contact information of the owner or operator of the MET; the proposed location of the MET; the proposed date of construction; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (c) provides that a person who owns or operates a MET shall register the tower with the department by submitting the appropriate form through the department's Internet website. The registration must be completed before the 30th day after the day that erection of the tower begins or February 29, 2016, whichever is later. These registration deadlines will allow the department to disseminate pertinent information related to existing towers through the web-based tool in a timely manner.

New subsection (d) sets out the information required to complete the registration form, including: the name, address, and contact information of the owner or operator of the MET; the location of the MET; for certain METs, an affirmation that the tower complies with the painting and marking requirements of Transportation Code, §21.071; and any other information the department deems necessary to assist in determining ownership, physical characteristics, or location of the tower.

New subsection (e) provides that a person who is responsible for filing a form required by subsection (a) or (c) shall amend the filed information as necessary to maintain accuracy of that information.

COMMENTS

The department received two comments regarding proposed §§30.501 - 30.503.

Comment: Major Steve Robertson, Texas Wing Director of Emergency Services, Civil Air Patrol, commented that while the notification requirement and posting of the coordinates of any newly erected MET will aid the Civil Air Patrol's mission, it is the provision for the painting and marking of METs that will most enhance the safety of any aircraft flying in the vicinity of these towers.

Response: The department appreciates the support of the Civil Air Patrol, Texas Wing, and agrees that the painting and marking of METs will offer a critical safety enhancement. The MET registration form will include an affirmation that METs at least 50 feet but not more than 200 feet in height above ground level comply with the requirements of Transportation Code, §21.071;

however, any further enforcement of MET markings falls outside of the scope of the department's authority.

Comment: Yasmina Platt, Central Southwest Regional Manager, Aircraft Owners and Pilots Association (AOPA), expressed appreciation for the legislation and adoption of rules to address the increasing safety concerns METs have created for aviation operators and pilots over the last few years. AOPA commented that, in addition to the department's online mapping tool, it would be beneficial for pilots to be able to consume the data in a format directly compatible with respective cockpit equipment and navigation software. To that end, AOPA suggested that the notice form also include any other information that flight planning providers and cockpit equipment providers would require to incorporate MET information into their respective databases. A format identical to that of the Federal Aviation Administration (FAA) digital obstacle file (DOF) was requested. AOPA also cited FAA Form 7460 "Notice of Proposed Construction or Alteration" as a good example for the registration form and, in addition to the information currently proposed to be collected, requested that the department include the proposed duration of the structure's location. Finally, AOPA proposed adding an aeronautical chart background to the web mapping application.

Response: The department appreciates the AOPA's support and agrees with most of the comments. The MET notice and registration system has been programmed to provide the data in a web map as well as in the FAA's DOF format. The goal is for pilots to be able to use the data in navigation systems seamlessly. The department believes that inclusion of information concerning the proposed duration of the structure's location would be redundant, as the presence of the MET in the database is an indication of the structure's continued presence on the ground. The use of aeronautical charts as a background for the web mapping application would be beneficial; however, the time constraints asso-

ciated with developing and activating the MET system, and the fact that the Texas Aeronautical Chart does not yet exist in digital form, have prevented the department from including this option. The department will consider this suggestion for future improvements to the system.

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, §21.071, which requires the department to adopt rules related to the notice and registration of METs.

CROSS REFERENCE TO STATUTE

Transportation Code, §21.071.

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

Filed with the Office of the Secretary of State on January 29, 2016.

TRD-201600399

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

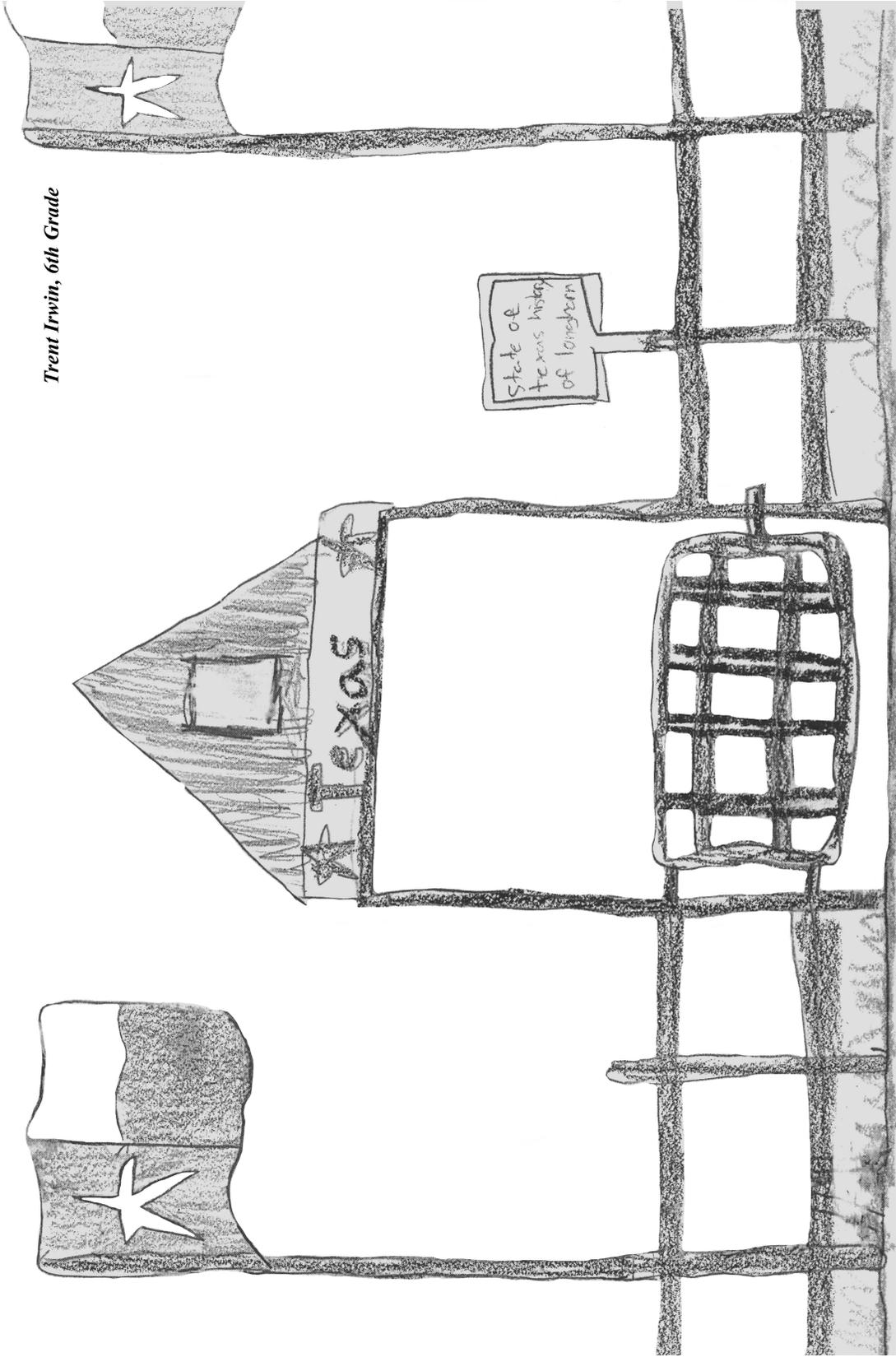
Effective date: February 18, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 463-8630



Trent Irwin, 6th Grade



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 100 are organized under the following subchapters: Subchapter A, Open-Enrollment Charter Schools, and Subchapter B, Home-Rule School District Charters.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 100, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337.

TRD-201600535

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 3, 2016



The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 129 are organized under the following subchapters: Subchapter A, Student Attendance Allowed, and Subchapter B, Student Attendance Accounting.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.texas.gov or faxed to (512) 463-5337.

TRD-201600536

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 3, 2016



Texas State Board of Public Accountancy

Title 22, Part 22

The Texas State Board of Public Accountancy will review and consider for re-adoption, revision or repeal Title 22 Texas Administrative Code Part 22, Chapters 501, 502, 505, 507, 509, 511, 512, 513, 514, 515, 517, 518, 519, 520, 521, 523, 525, 526 and 527.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rules continue to exist. The rule review will also determine whether the rules are obsolete, whether the rules reflect current legal and policy considerations and whether the rules reflect current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 120 days to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Any proposed changes to the rules as a result of this review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

Chapter 501 - Rules of Professional Conduct

Chapter 502 - Peer Assistance

Chapter 505 - The Board

Chapter 507 - Employees of the Board

Chapter 509 - Rulemaking Procedures

Chapter 511 - Eligibility

Chapter 512 - Certification by Reciprocity

Chapter 513 - Registration

Chapter 514 - Certification as a CPA

Chapter 515 - Licenses

Chapter 517 - Practice by Certain Out of State Firms and Individuals

Chapter 518 - Unauthorized Practice of Public Accountancy

Chapter 519 - Practice and Procedure

Chapter 520 - Provisions for the Fifth-Year Accounting Students Scholarship Program

Chapter 521 - Fee Schedule

Chapter 523 - Continuing Professional Education

Chapter 525 - Criminal Background Investigations

Chapter 526 - Board Opinions

Chapter 527 - Peer Review

TRD-201600539

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Filed: February 3, 2016



Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC Part 1, Chapter 1, Management, Chapter 5, Finance, Chapter 11, Design, Chapter 15, Financing and Construction of Transportation Projects, Chapter 21, Right of Way, and Chapter 27, Toll Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, 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 "Rule Review." The deadline for receipt of comments is 5:00 p.m. on March 14, 2016.

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.

TRD-201600533

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: February 3, 2016



Texas Veterans Land Board

Title 40, Part 5

Pursuant to the Texas Government Code §2001.039, the Veterans Land Board (VLB) submits this notice of its intent to review and to consider for readoption, revision, or repeal of the following chapters:

Chapter 175. General Rules of the Veterans Land Board

Chapter 176. Veterans Homes

Chapter 177. Veterans Housing Assistance Program

Chapter 178. Texas State Veterans Cemeteries

The rules to be reviewed are found in Title 40, Part 5, of the Texas Administrative Code.

During the review process, the VLB will determine whether the reasons for adoption of the rules continue to exist, whether amendments or changes are needed, or whether repeal of the chapter is appropriate. Existing rules may be amended for simplification or clarity.

This review of Chapters 175, 176, 177 and 178 is filed in accordance with the VLB's rule review plan published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8035).

The VLB will consider comments related to whether the reasons for adoption of these rules continue to exist, whether amendments or changes are needed or whether repeal of the chapter is appropriate. Any changes to the rules will be proposed by the VLB after reviewing the rules and considering the comments received in response to this notice. Any proposed rule changes will then appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The VLB will accept written comments on this rule review for a thirty day period beginning on the date of publication of this notice of intent to review in the *Texas Register*. Any comments or questions should be directed to Walter Talley, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311, email address walter.talley@glo.texas.gov. Comments received later than thirty days following the date of publication of this notice will not be considered.

TRD-201600392

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

Texas Veterans Land Board

Filed: January 29, 2016



Adopted Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

Chapter 1. Agency Administration

The Texas Higher Education Coordinating Board adopts the review of Chapter 1 concerning Agency Administration. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 1 as required by the Texas Government Code, §2001.039.

TRD-201600512

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas

The Texas Higher Education Coordinating Board adopts the review of Chapter 4 concerning. Rules Applying to All Public Institutions of Higher Education in Texas. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chap-

ter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 4 as required by the Texas Government Code, §2001.039.

TRD-201600513
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 5. Rules Applying to Public Universities, Health-Related Institutions, and/or Selected Public Colleges of Higher Education in Texas

The Texas Higher Education Coordinating Board adopts the review of Chapter 5 concerning. Rules Applying to Public Universities, Health-Related Institutions, and/or Selected Public Colleges of Higher Education in Texas. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 5 as required by the Texas Government Code, §2001.039.

TRD-201600514
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 6. Health Education, Training, and Research Funds

The Texas Higher Education Coordinating Board adopts the review of Chapter 6 concerning. Health Education, Training, and Research Funds. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 6 as required by the Texas Government Code, §2001.039.

TRD-201600515
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 7. Degree Granting Colleges and Universities Other Than Texas Public Institutions

The Texas Higher Education Coordinating Board adopts the review of Chapter 7 concerning. Degree Granting Colleges and Universities Other Than Texas Public Institutions. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40

TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 7 as required by the Texas Government Code, §2001.039.

TRD-201600516
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 8. Creation, Expansion, Dissolution, or Conservatorship of Public Community College Districts

The Texas Higher Education Coordinating Board adopts the review of Chapter 8 concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community College Districts. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 8 as required by the Texas Government Code, §2001.039.

TRD-201600517
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 9. Program Development in Public Two-Year Colleges

The Texas Higher Education Coordinating Board adopts the review of Chapter 9 concerning Program Development in Public Two-Year Colleges. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6942). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 9 as required by the Texas Government Code, §2001.039.

TRD-201600518
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 11. Texas State Technical College System

The Texas Higher Education Coordinating Board adopts the review of Chapter 11 concerning Texas State Technical College System. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board de-

terminated that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 11 as required by the Texas Government Code, §2001.039.

TRD-201600519

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 13. Financial Planning

The Texas Higher Education Coordinating Board adopts the review of Chapter 13 concerning Financial Planning. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 13 as required by the Texas Government Code, §2001.039.

TRD-201600520

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 14. Research Funding Programs

The Texas Higher Education Coordinating Board adopts the review of Chapter 14 concerning Research Funding Programs. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 14 as required by the Texas Government Code, §2001.039.

TRD-201600521

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 15. National Research Universities

The Texas Higher Education Coordinating Board adopts the review of Chapter 15 concerning National Research Universities. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 15 as required by the Texas Government Code, §2001.039.

TRD-201600522

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 17. Resource Planning

The Texas Higher Education Coordinating Board adopts the review of Chapter 17 concerning Resource Planning. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 17 as required by the Texas Government Code, §2001.039.

TRD-201600523

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 21. Student Services

The Texas Higher Education Coordinating Board adopts the review of Chapter 21 concerning Student Services. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 21 as required by the Texas Government Code, §2001.039.

TRD-201600524

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Chapter 22. Grant and Scholarship Programs

The Texas Higher Education Coordinating Board adopts the review of Chapter 22 concerning Grant and Scholarship Programs. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6943). No comments were received regarding the review of this chapter. During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 22 as required by the Texas Government Code, §2001.039.

TRD-201600525

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Chapter 25. Optional Retirement Program

The Texas Higher Education Coordinating Board adopts the review of Chapter 25 concerning Optional Retirement Program. The proposed notice of review was published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6944). No comments were received regarding the review of this chapter. During its review, the Board determined

that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

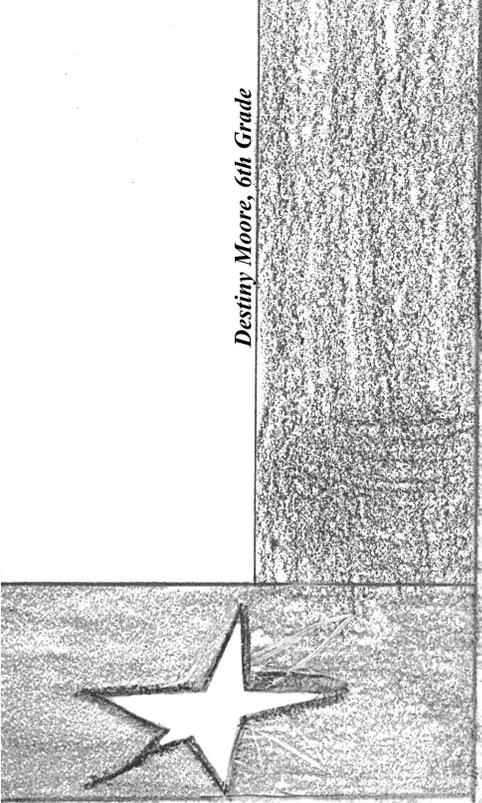
This concludes the Board's review of Chapter 25 as required by the Texas Government Code, §2001.039.

TRD-201600526

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 3, 2016



Destiny Moore, 6th Grade



Texas

Forever and always

TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 43 TAC §9.111(c)

Guidelines for Application of Sanctions based on Grounds and Factors

Ground for Sanction	Sanction			Debarment
	Reprimand	Prohibition from entering into a specified agreement	Limit on contract amount	
§10.101(4) relating to maintaining good standing	allowable with written explanation of justification	allowable with written explanation of justification	allowable with written explanation of justification	recommended
§10.101(3) relating to adherence to civil and criminal laws	allowable with written explanation of justification	allowable with written explanation of justification	recommended only if: <ul style="list-style-type: none"> the contractor meets all mitigating factors listed in §9.110(c), and the contractor has not committed similar acts or omissions and the seriousness and willfulness of the act or omission is not severe, and 	recommended if: <ul style="list-style-type: none"> the contractor does not meet all mitigating factors listed in §9.110(c), or the contractor has committed similar acts or omissions, or the seriousness and willfulness of the act or omission is severe, or the department has not been

<p>fully compensated for any damages suffered by the department as a result of the contractor's acts or omissions</p>	<p>• the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions</p>	<p>recommended only if:</p> <ul style="list-style-type: none"> • the contractor meets no mitigating factors listed in §9.110(c), or • the contractor has committed similar acts or omissions, or • the seriousness and willfulness of the act or omission is not severe, or • the department has not been 	<p>recommended only if:</p> <ul style="list-style-type: none"> • the contractor meets some of the mitigating factors of §9.110(c), and • the contractor has not committed similar acts or omissions, and • the seriousness and willfulness of the act or 	<p>allowable with written explanation of justification</p>	<p>§10.101(2) relating to offering, giving, or agreeing to give a benefit; §10.101(1) relating to conflicts of interest; §9.107(a)(1) relating to failure to execute a contract; or §9.107(a)(3) relating to contractor's declaration of default</p>
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	<p>omission is not severe, and</p> <ul style="list-style-type: none"> the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>omission is not severe, and</p> <ul style="list-style-type: none"> the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>omission is not severe, and</p> <ul style="list-style-type: none"> the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>omission is not severe, and</p> <ul style="list-style-type: none"> the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions
<p>\$10.101(5) relating to notifying the department; or \$9.107(a)(2) relating to rejection of two or more bids</p>	<p>recommended only if:</p> <ul style="list-style-type: none"> the contractor meets all mitigating factors listed in §9.110(c), and the contractor has not committed similar acts or omissions 	<p>recommended only if:</p> <ul style="list-style-type: none"> the contractor meets some of the mitigating factors of §9.110(c), and the contractor has not committed similar acts or omissions, 	<p>recommended only if:</p> <ul style="list-style-type: none"> the contractor has committed similar acts or omissions, 	<p>recommended only if:</p> <ul style="list-style-type: none"> the contractor has committed similar acts or omissions,

	<p>omissions, and</p> <ul style="list-style-type: none"> the seriousness and willfulness of the act or omission is not severe, and the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>and</p> <ul style="list-style-type: none"> the seriousness and willfulness of the act or omission is not severe, and the contractor, or a third party on behalf of the contractor, has fully compensated the department for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>omission is severe, or</p> <ul style="list-style-type: none"> the department has not been fully compensated for any damages suffered by the department as a result of the contractor's acts or omissions 	<p>of the act or omission is severe, and</p> <ul style="list-style-type: none"> the department has not been fully compensated for any damages suffered by the department as a result of the contractor's acts or omissions 	<p><u>§9.107(a)(5) relating to a contractor not being responsive in the timely completion of projects under</u></p>	<p><u>allowable with written explanation of justification</u></p>	<p><u>allowable with written explanation of justification</u></p>	<p><u>recommended</u></p>	<p><u>recommended only if:</u></p> <ul style="list-style-type: none"> <u>the contractor has committed similar acts</u>
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department as
a result of
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contractor's
acts or
omissions

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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.

Department of Aging and Disability Services

State Supported Living Centers Long Range Report

The Texas Department of Aging and Disability Services (DADS) will hold a public meeting on March 10, 2016, to accept public testimony regarding long range planning for state supported living centers (SSLC).

The meeting will be held in the Public Hearing Room of the John H. Winters Building, 701 West 51st St., Austin, Texas. The meeting will begin 30 minutes following adjournment of the DADS Council meeting which convenes at 8:30 a.m.

DADS is required in the Texas Health and Safety Code, Title 7, Subtitle A, Chapter 533A, Subchapter B, §533A.032(c) to prepare a report about the provision of services at SSLCs. A second hearing soliciting comment on the draft report will be held June 9, 2016 in Austin.

If you wish to submit written comments in lieu of public testimony, please email comments beginning March 10, 2016 through June 10, 2016 by 5:00 p.m. to SslcReport@dads.state.tx.us or via U.S. Postal Service to DADS State Supported Living Centers, State Office (W-511), 701 W. 51st St., Austin, Texas 78751. Comments submitted via U.S. Postal Service must be postmarked by June 10, 2016.

Persons with disabilities attending the public meeting who require special adaptive services are requested to contact Bill Macdonald at (512) 438-4157 or send via email to bill.macdonald@dads.state.tx.us by March 3, 2016 to make arrangements.

TRD-201600505

Lawrence T. Hornsby

General Counsel

Department of Aging and Disability Services

Filed: February 2, 2016



Texas Department of Agriculture

2016 Expanding Nutrition Education Grant Program Request for Applications

The Texas Department of Agriculture (TDA) is accepting applications for the **Expanding the 3E's Grant Program (X3E)**, in accordance with Texas Education Code §38.026, in which the state legislature has appropriated funding to TDA award grants up to \$10,000 to public school campuses that are in good standing with the Texas Comptroller's Office and have clearly demonstrated the use of best practices in nutrition education.

TDA is authorized by §12.0027 of the Texas Agriculture Code to administer the 3E's Grant Program (3E's) to promote better health and nutrition programs and prevent obesity among children in this state. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well-being through education, exercise and eating right. TDA's 3E's Grant Program consists of two program categories:

1. **Establishing the 3E's Grant Program (Establish3E)** -- a program that incentivizes nutrition education programs in any childcare institution or community organization; and
2. **Expanding the 3E's Grant Program (X3E)** -- a program that rewards nutrition education programs in public schools only.

Grant applications will be accepted from any public school campus in the State of Texas in good standing with TDA. If multiple campuses in a district are applying for the same project, the requests should be combined into one application. The application will require the school district to list participating campus names and the requested amount per campus. Applicants may seek up to \$10,000 per campus for expenses related to the implementation, supplementation, improvement, or expansion of nutrition education program, Coordinated School Health Plan, or farm to school activities proposed in the application. Total funding awarded to a single school district shall not exceed \$10,000 per campus or \$50,000, whichever is less. Other restrictions or funding limitations may also be considered during the award process. Selected applications will receive funding on a cost-reimbursement basis.

Selected projects will receive funding on a cost reimbursement basis. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Application Requirements and Deadline

Application and information can be downloaded from TDA's website at: www.texasagriculture.gov under the Grants & Services Tab.

One complete application packet, including the proposal narrative and signed application, must be received by TDA before close of business (5:00 p.m. CT) on Tuesday, March 22, 2016. It is the applicant's responsibility to ensure the timely delivery of all required materials.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office at (512) 463-9932, or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201600371

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: January 28, 2016



Brazos Valley Council of Governments

Notice of Release of Request for Proposals for Managing the Brazos Valley Child Care Management System and Management and Operation of the Brazos Valley Workforce Centers System

On February 3, 2016, the Workforce Solutions Brazos Valley Board will release a Request for Proposals (RFP) for:

A. Managing the Child Care Management System, which provides access to child care services, and

B. Management and Operation of the Brazos Valley Workforce Center System, providing access to these workforce development programs: Workforce Investment Act (WIA) programs for Adults, Dislocated Workers and Youth; Choices/TANF; Supplemental Nutrition Assistance Program (SNAP); Business Services, Trade Adjustment Act programs, and Employment Service Programs.

These services are provided for the residents and employers of Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. Brazos Valley Workforce Development Board (BVWDB) will receive proposals from private and public organizations or individuals to provide the requested services as an independent contractor for the seven Workforce Centers in the Brazos Valley Region, effective October 1, 2016. The Board's intent by this solicitation is to obtain a management entity that will provide on-site leadership of the child care management system and the workforce center system in a manner that will enhance the performance of the center system as well as improve the quality of customer service.

A Bidder's Conference will be held through a telephone conference call on February 17, 2016, from 10:00 a.m. to 11:00 a.m. for Option A, Child Care Management, and 11:00 a.m. to 12:00 p.m. for Option B, Workforce Center Systems Management and Operation. Individuals and organizations interested in calling in should contact Richard Rogers by phone at (512) 963-4895 or by e-mail at richard@swtexas.net no later than **9:00 a.m. on the day of the call** (see contact information below) to receive the phone number and pass code for the call. To view and download the RFP go to www.bvjobs.org.

The contact person for this procurement is Board Consultant Richard Rogers, phone number (512) 963-4895, e-mail richard@swtexas.net. Difficulties downloading the RFP document should be referred to Shawna Rendon at (979) 595-2800.

Proposals in response to this RFP are due no later than 12:00 p.m. Thursday March 17, 2016, to Workforce Solutions Brazos Valley at 3991 East 29th Street, Bryan, Texas 77802. Mailed proposals should be addressed to: WSBVB, P.O. Box 4128, Bryan, Texas 77805. Proposals arriving after the due date and time will not be accepted, regardless of post marked date.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819

TRD-201600384

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: January 29, 2016

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 218c ("RFP 218c") for Endangered Species Research Projects for the Monarch Butterfly. The successful respondent(s), if any, will be expected to begin performance of the contract on or after April 25, 2016.

Contact: Parties interested in submitting a proposal should contact Laurie Velasco, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201,

Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller will make the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, February 12, 2016, after 10:00 a.m. Central Time. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Friday, February 19, 2016. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. On or about Monday, February 29, 2016, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m., on Thursday, March 24, 2016. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 12, 2016, after 10:00 a.m.; Questions Due - February 19, 2016, 2:00 p.m.; Official Responses to Questions post - February 29, 2016, or as soon thereafter as practical; Proposals Due - **March 24, 2016, 2:00 p.m. CT**; Contract Execution - April 25, 2016, or as soon thereafter as practical; and Commencement of Work - on or after April 25, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201600541

Laurie Velasco

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: February 3, 2016

Notice of Request for Proposals

Pursuant to Chapter 403, Subchapter Q of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 218d ("RFP 218d") for Management and Regulatory Services for the Texas Conservation Plan for the Dunes Sagebrush Lizard. The successful respondent(s), if any, will be expected to begin performance of the contract on or after March 1, 2016.

Contact: Parties interested in submitting a proposal should contact Laurie Velasco, Assistant General Counsel, Contracts Section, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm. 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. Comptroller has made the entire RFP available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us>. The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. on Thursday, February 11, 2016. Prospective respondents are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, February 12, 2016, Comptroller expects to post responses to questions on the ESBD. **Respondents are solely responsible for verifying timely receipt of Questions in the Issuing Office. Late questions will not be considered under any circumstances.**

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m., on Friday, February 26, 2016. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 5, 2016, after 10:00 a.m.; Questions Due - February 11, 2016, 2:00 p.m.; Official Responses to Questions post - February 12, 2016, or as soon thereafter as practical; Proposals Due - **February 26, 2016, 2:00 p.m. CT**; Contract Execution - March 1, 2016, or as soon thereafter as practical; and Commencement of Work - on or after March 1, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201600542

Laurie Velasco

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: February 3, 2016

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 02/08/16 - 02/14/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/08/16 - 02/14/16 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 02/01/16 - 02/29/16 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/16 - 02/29/16 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.

³ For variable rate commercial transactions only.

TRD-201600478

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 2, 2016

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 14, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 14, 2016. 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: ALON USA, LP; DOCKET NUMBER: 2015-1519-IWD-E; IDENTIFIER: RN100250869; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: petroleum refinery with a wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001768000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 002 and 101, by failing to comply with permitted effluent limitations; PENALTY: \$45,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: AMERICAF, LLC, Joe Mendes Borges, and Mary Francis Borges; DOCKET NUMBER: 2015-1208-AGR-E; IDENTIFIER: RN101519395; LOCATION: Lingleville, Erath County; TYPE OF FACILITY: dairy feedlot; RULES VIOLATED: 30 TAC §321.31(a) and §321.40(d), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0004208000, Part VII, Pollution Prevention Plan Requirements, Section A.8.(f)(1) and (2)(i), by failing to prevent the unauthorized discharge of agricultural waste into or adjacent to water in the state; PENALTY: \$2,500; ENFORCEMENT COORDINATOR:

Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: AMY OIL AND GAS INCORPORATED dba Lone Star Supermarket; DOCKET NUMBER: 2015-1453-PST-E; IDENTIFIER: RN101383305; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES 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; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month and failing to provide release detection for the suction piping associated with the UST system; and 30 TAC §334.51(c)(2), by failing to maintain records adequate to demonstrate compliance with spill and overflow prevention requirements; PENALTY: \$10,608; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Barbara E. Kiolbassa dba River Oaks Ranch Subdivision and John W. Kiolbassa dba River Oaks Ranch Subdivision; DOCKET NUMBER: 2015-1081-PWS-E; IDENTIFIER: RN106441124; LOCATION: Pipe Creek, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of January 2015 - April 2015 and failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to collect routine coliform samples for the months of January 2015 and February 2015; and 30 TAC §290.117(c)(2)(A) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect semiannual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the July 1, 2013 - December 31, 2013, January 1, 2014 - June 30, 2014, and July 1, 2014 - December 31, 2014 monitoring periods and failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to collect lead and copper tap samples for the January 1, 2014 - June 30, 2014 and July 1, 2014 - December 31, 2014 monitoring periods; PENALTY: \$2,129; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Pasadena; DOCKET NUMBER: 2015-0943-MWD-E; IDENTIFIER: RN101608693; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit (TPDES) Number WQ0010053009, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §30.350(d) and §305.125(1), and TPDES Permit Number WQ0010053009, Other Requirements Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators who holds a Class A license or higher; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010053009, Monitoring and Reporting Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the executive director for a longer period; PENALTY: \$28,626; Supplemental Environmental Project offset amount of \$22,901; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Toyah; DOCKET NUMBER: 2015-1546-PWS-E; IDENTIFIER: RN101225001; LOCATION: Toyah, Reeves County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for TTHM; PENALTY: \$243; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: COASTAL TRANSPORT COMPANY, INCORPORATED; DOCKET NUMBER: 2015-1717-PST-E; IDENTIFIER: RN100708171; LOCATION: Corpus Christi, Nueces County and Ingleside, San Patricio County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,350; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Craig's Dirt Service, L.L.C.; DOCKET NUMBER: 2015-1342-WQ-E; IDENTIFIER: RN105917041; LOCATION: Lindale, Smith County; TYPE OF FACILITY: aggregate production operation (APO) and sand and gravel mine; RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; TWC, §26.121(a)(1), by failing to prevent the discharge of sediment into or adjacent to any water in the state; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05BI78, Part III, Section B.3 and B.2, by failing to conduct quarterly visual monitoring and quarterly routine facility inspections; and 30 TAC §305.125(1) and TPDES General Permit Number TXR05BI78 Part IV, Section A.1 and B.1(a) and Part V, Section J.7, by failing to conduct benchmark monitoring on discharges of stormwater associated with industrial activities; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: DOG RIDGE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1536-PWS-E; IDENTIFIER: RN101191153; LOCATION: Belton, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(f)(4), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate of at least 0.6 gallons per minute per connection; 30 TAC §290.43(e), by failing to ensure all potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.43(c)(8), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.109(c)(1)(B), by failing to collect routine distribution coliform samples at locations specified in the facility's monitoring plan; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$1,458; ENFORCEMENT

COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: EnLink North Texas Gathering, LP; DOCKET NUMBER: 2015-1430-AIR-E; IDENTIFIER: RN105378434; LOCATION: Johnson, Johnson County; TYPE OF FACILITY: natural gas compression station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3485, General Terms and Conditions (GTC), by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3485, GTC, by failing to report all instances of deviations; PENALTY: \$3,680; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: EnLink North Texas Gathering, LP; DOCKET NUMBER: 2015-1429-AIR-E; IDENTIFIER: RN105225700; LOCATION: Godley, Johnson County; TYPE OF FACILITY: natural gas compression station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3483, General Terms and Conditions (GTC), by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3483, GTC, by failing to report all instances of deviations; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2015-1616-AIR-E; IDENTIFIER: RN102940103; LOCATION: Houston, Harris County; TYPE OF FACILITY: liquid petroleum gas bulk storage and transport; RULES VIOLATED: 30 TAC §§101.20(1), 115.722(d), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(3)(ii), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3402, Special Terms and Conditions Number 1A, by failing to comply with the minimum net heating value of 300 British thermal units per standard cubic foot for the flared gas; PENALTY: \$3,825; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Galveston Bay Energy, LLC; DOCKET NUMBER: 2015-1273-AIR-E; IDENTIFIER: RN100209774; LOCATION: Trinity Bay, Chambers County; TYPE OF FACILITY: oil and natural gas production plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain proper authorization prior to operation of a source of air emissions; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Gary D. Steed dba Canyon Dam Mobile Home Park and Patty M. Steed dba Canyon Dam Mobile Home Park; DOCKET NUMBER: 2015-1680-PWS-E; IDENTIFIER: RN102676681; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and §290.122(a)(2) and (f) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level (MCL) of 10 milligrams per liter for nitrate for the first and third quarters of 2015 and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the acute MCL for nitrate for the first quarter of

2015; PENALTY: \$750; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(15) COMPANY: GoPetro Transport LLC; DOCKET NUMBER: 2015-1704-PST-E; IDENTIFIER: RN107747370; LOCATION: Houston, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: \$3,100; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: HILLCROFT GROCERS, L.L.C.; DOCKET NUMBER: 2015-1556-PST-E; IDENTIFIER: RN101432771; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1), 30 TAC §334.50(b)(1)(A), TWC, §26.3475(c)(1) and (d), by failing to provide corrosion protection for the underground storage tank (UST) system and failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$6,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: J and T Legend Homes Abilene, LLC; DOCKET NUMBER: 2016-0054-WQ-E; IDENTIFIER: RN108853854; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: MANNING SERVICES, LLC; DOCKET NUMBER: 2015-1560-PWS-E; IDENTIFIER: RN106910854; LOCATION: George West, Live Oak County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c), by failing to provide a ground storage tank that is designed, fabricated, erected, tested, and disinfected, in strict accordance with American Water Works Association standards; 30 TAC §290.43(d)(2), by failing to provide the facility's 750 gallon pressure tank with a pressure release device; 30 TAC §290.46(f)(2), (3)(A)(i)(III) and (iv), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's secondary well; 30 TAC §290.110(e)(4)(B), by failing to timely complete a Disinfection Level Quarterly Operating Report each quarter and provide a copy if requested by the executive director; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; and 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's four ground storage tanks annually; PENALTY: \$2,070; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL

OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: PALO DURO SERVICE COMPANY, INCORPORATED; DOCKET NUMBER: 2015-1648-PWS-E; IDENTIFIER: RN101185684; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.20 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12200 for calendar years 2001, 2002, 2003, 2008, and 2014; PENALTY: \$1,080; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: POST OAK HILL WATER SUPPLY CORPORATION and Mert Way; DOCKET NUMBER: 2015-1584-PWS-E; IDENTIFIER: RN101175438; LOCATION: Somerville, Burlison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2014 - December 31, 2014 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2011 - 2014; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the first quarter of 2015 and regarding the failure to collect routine distribution water samples for coliform analysis during the months of May 2013, March 2014, and October 2014; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12686 for the calendar years 2013 and 2014; PENALTY: \$932; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Sabine County; DOCKET NUMBER: 2015-1661-MSW-E; IDENTIFIER: RN108783267; LOCATION: Brookeland, Sabine County; TYPE OF FACILITY: used oil collection center; RULES VIOLATED: 30 TAC §324.7(3)(B), Texas Health and Safety Code (THSC), §371.024(b)(1) and 40 Code of Federal Regulations (CFR) §279.31(b)(2), by failing to register as a used oil collection center; and 30 TAC §324.1 and §328.23(c), THSC, §371.041 and 40 CFR §279.22(b), by failing to ensure that containers and aboveground tanks used to store used oil are in good condition and not leaking; PENALTY: \$326; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: SAGERTON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1366-PWS-E; IDENTIFIER: RN101218386; LOCATION: Sagerton, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11296 for calendar year 1997; PENALTY: \$156; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Scott W. Gray dba Iwanda Mobile Home Park; DOCKET NUMBER: 2015-1476-PWS-E; IDENTIFIER: RN101245751; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the executive director for the January 1, 2010 - June 30, 2010, July 1, 2010 - December 31, 2010, and January 1, 2011 - June 30, 2011 monitoring periods; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the first quarter of 2015; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at a TCEQ approved laboratory, and submit the results to the executive director for the July 1, 2011 - December 31, 2011, July 1, 2012 - December 31, 2012, January 1, 2013 - June 30, 2013, July 1, 2013 - December 31, 2013, January 1, 2014 - June 30, 2014, and January 1, 2015 - June 30, 2015 monitoring periods; 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy, availability and/or content requirements for the consumer confidence report for the year of 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit the DLQOR for the third quarter of 2014; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the July 1, 2014 - December 31, 2014 monitoring period; PENALTY: \$4,468; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Smurfit Kappa Orange County LLC; DOCKET NUMBER: 2015-1659-AIR-E; IDENTIFIER: RN100754779; LOCATION: Forney, Kaufman County; TYPE OF FACILITY: cardboard manufacturing plant; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2979, Special Terms and Conditions (STC) Number 10, and Standard Permit Registration Number 77162, by failing to comply with maximum emissions rate; 30 TAC §122.143(4), THSC, §382.085(b), FOP Number O2979, STC Number 10, and Standard Permit Registration Number 77162, General Requirements Number 4(G), by failing to re-certify the Combined Heat and Power Unit as recommended by the manufacturer's maintenance schedule; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP

Number O2979, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: \$25,790; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Texas Barge and Boat, Incorporated; DOCKET NUMBER: 2015-1410-AIR-E; IDENTIFIER: RN102037959; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: barge cleaning operations; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(f)(2), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1698, Special Terms and Conditions (STC) Number 12, and New Source Review Permit Number 22106, Special Conditions Number 20(B)(2), by failing to utilize a proper method to detect the pilot flame on the flare; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O1698, General Terms and Conditions (GTC) and STC Number 15, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O1698, GTC, by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$37,275; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2015-1530-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Webb County; DOCKET NUMBER: 2015-0239-MWD-E; IDENTIFIER: RN101717601; LOCATION: Laredo, Webb County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013577003, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; 30 TAC §305.125(17) and TPDES Permit Number WQ0013577003, Sludge Provisions, Section III.G, by failing to timely submit the annual sludge report; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0013577003, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 3; PENALTY: \$13,642; Supplemental Environmental Project offset amount of \$10,914; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201600476

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 2, 2016



Enforcement Orders

An agreed order was entered regarding ALAMO RECYCLE CENTERS LLC, Docket No. 2013-0499-MSW-E on January 21, 2016 assessing \$14,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOOD TIME STORES, INC. dba Good Time Store 70, Docket No. 2013-1551-PST-E on January 21, 2016 assessing \$7,664 in administrative penalties with \$1,532 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Molinos Anahuac, Inc., Docket No. 2014-0175-IWD-E on January 21, 2016 assessing \$29,219 in administrative penalties with \$5,843 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Denison, Docket No. 2014-0532-MWD-E on January 21, 2016 assessing \$13,063 in administrative penalties with \$2,612 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 BLUE WATER FALL INC. dba Shop-N-Go, Docket No. 2014-0546-PST-E on January 21, 2016 assessing \$54,000 in administrative penalties with \$52,800 deferred.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney, at (512) 239-3400 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Liborio Garcia and EXPERT CONSTRUCTION, INC., Docket No. 2014-0581-MLM-E on January 21, 2016 assessing \$9,724 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SSOS Realty Corporation dba Economy Food & Gas 3, Docket No. 2014-0727-PST-E on January 21, 2016 assessing \$16,456 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Ricky Woods dba Rick's Tire Service, Docket No. 2014-1006-MSW-E on January 21, 2016 assessing \$1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pergan Marshall LLC, Docket No. 2014-1067-MLM-E on January 21, 2016 assessing \$92,482 in administrative penalties with \$18,495 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 Mehdi Ali dba All Seasons, Docket No. 2014-1068-PST-E on January 21, 2016 assessing \$15,851 in administrative penalties with \$3,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNION CARBIDE CORPORATION, Docket No. 2014-1359-MLM-E on January 21, 2016 assessing \$119,634 in administrative penalties with \$23,926 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 BONDED JOINT VENTURES, INC., Docket No. 2014-1442-MSW-E on January 21, 2016 assessing \$16,875 in administrative penalties with \$13,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHAHEEN INTERNATIONAL, INC. dba Fisco, Docket No. 2014-1474-PST-E on January 21, 2016 assessing \$20,985 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2014-1641-AIR-E on January 21, 2016 assessing \$33,938 in administrative penalties with \$6,787 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhad Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding the shingle yard LLC, Docket No. 2014-1644-MSW-E on January 21, 2016 assessing \$61,830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fracmax Inc., Docket No. 2014-1679-AIR-E on January 21, 2016 assessing \$19,814 in administrative penalties with \$18,614 deferred.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WOLFE AIRPARK CIVIC CLUB, INC., Docket No. 2014-1735-PWS-E on January 21, 2016 assessing \$1,494 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, 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 Jimmie Jackson, Docket No. 2014-1836-MSW-E on January 21, 2016 assessing \$33,750 in administrative penalties with \$32,550 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding H&F Sandblasting, LLC, Docket No. 2015-0236-AIR-E on January 21, 2016 assessing \$1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranch 967, LLC, Docket No. 2015-0240-EAQ-E on January 21, 2016 assessing \$25,313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Rhonda C. Vanover dba Seven Estates, Docket No. 2015-0266-PWS-E on January 21, 2016 assessing \$3,164 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Michael K. Gerard, Docket No. 2015-0273-LII-E on January 21, 2016 assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALF Properties L.L.C., Docket No. 2015-0313-WQ-E on January 21, 2016 assessing \$15,750 in administrative penalties with \$3,150 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. A default order was entered regarding ASPN INVESTMENT COMPANY, INC. dba Cameron Mini Mart, Docket No. 2015-0321-PST-E on January 21, 2016 assessing \$4,630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2015-0325-AIR-E on January 21, 2016 assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Park Place Valero corp dba Taef Food Mart, Docket No. 2015-0328-PST-E on January 21, 2016 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mansfield Sand & Select, LLC, Docket No. 2015-0340-WQ-E on January 21, 2016 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2015-0372-AIR-E on January 21, 2016 assessing \$81,341 in administrative penalties with \$16,267 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Norberto Paita, Docket No. 2015-0399-LII-E on January 21, 2016 assessing \$952 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2015-0432-IWD-E on January 21, 2016 assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding INS EMERALD, L.L.C. dba LUNA MART, Docket No. 2015-0441-PST-E on January 21, 2016 assessing \$7,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2015-0442-AIR-E on January 21, 2016 assessing \$13,126 in administrative penalties with \$2,625 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 Billy Gamboa and Sarah Gamboa dba Trails End RV Park, Docket No. 2015-0463-PWS-E on January 21, 2016 assessing \$330 in administrative penalties with \$330 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Targa Downstream LLC, Docket No. 2015-0471-AIR-E on January 21, 2016 assessing \$25,563 in administrative penalties with \$5,112 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 GREENWOOD VENTURES INC., Docket No. 2015-0498-PWS-E on January 21, 2016 assessing \$1,979 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epi 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 Sid Richardson Carbon, LTD, Docket No. 2015-0522-AIR-E on January 21, 2016 assessing \$87,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark Stewart, Docket No. 2015-0526-PWS-E on January 21, 2016 assessing \$3,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHEFFIELD WATER SUPPLY CORPORATION, Docket No. 2015-0535-PWS-E on January 21, 2016 assessing \$525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlantic Coffee Industrial Solutions, LLC, Docket No. 2015-0542-AIR-E on January 21, 2016 assessing \$23,900 in administrative penalties with \$4,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Department of Veterans Affairs, Docket No. 2015-0546-PWS-E on January 21, 2016 assessing \$157 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Gas Processing, Inc., Docket No. 2015-0591-AIR-E on January 21, 2016 assessing \$15,400 in administrative penalties with \$3,080 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 Aqua Texas, Inc., Docket No. 2015-0598-MWD-E on January 21, 2016 assessing \$7,812 in administrative penalties with \$1,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Umair Qadir dba Pic N Go, Docket No. 2015-0625-PST-E on January 21, 2016 assessing \$16,235 in administrative penalties with \$3,247 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW K & T QUICK STOP, INC. dba K & H FOOD STORE, Docket No. 2015-0627-PST-E on January 21, 2016 assessing \$7,886 in administrative penalties with \$1,577 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. A default order was entered regarding Dolores Longoria dba El Indio Grocery, Docket No. 2015-0629-PST-E on January 21, 2016 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAA Enterprises, Inc. dba Flash Mart Abrams, Docket No. 2015-0657-PST-E on January 21, 2016 assessing \$8,189 in administrative penalties with \$1,637 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 Chevron Phillips Chemical Company LP, Docket No. 2015-0669-AIR-E on January 21, 2016 assessing \$13,125 in administrative penalties with \$2,625 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 Eastman Chemical Company, Docket No. 2015-0691-AIR-E on January 21, 2016 assessing \$25,624 in administrative penalties with \$5,124 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cameron Rig Solutions, Inc., Docket No. 2015-0692-AIR-E on January 21, 2016 assessing \$18,750 in administrative penalties with \$3,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JJM DEVELOPMENT, INC., Docket No. 2015-0734-PWS-E on January 21, 2016 assessing \$926 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-

4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coleman County Special Utility District, Docket No. 2015-0735-PWS-E on January 21, 2016 assessing \$672 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Malhi International Inc. dba Cowboy Mart 2, Docket No. 2015-0774-PST-E on January 21, 2016 assessing \$11,670 in administrative penalties with \$2,334 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 ZANELLI FAMILY PARTNERSHIP, LTD., Docket No. 2015-0786-PWS-E on January 21, 2016 assessing \$2,039 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.S.P. BUSINESS, INC. dba Country Food Mart, Docket No. 2015-0794-PST-E on January 21, 2016 assessing \$8,589 in administrative penalties with \$1,717 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 City of Kemp, Docket No. 2015-0800-MWD-E on January 21, 2016 assessing \$8,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Throckmorton, Docket No. 2015-0821-PWS-E on January 21, 2016 assessing \$648 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2015-0838-AIR-E on January 21, 2016 assessing \$100,000 in administrative penalties.

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 Martin County FWSD 1, Docket No. 2015-0848-PWS-E on January 21, 2016 assessing \$660 in administrative penalties with \$660 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank E. Plocek Sr. dba Plocek RV Park, Docket No. 2015-0877-PWS-E on January 21, 2016 assessing \$998 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTEX CAPITAL, LTD., Docket No. 2015-0883-PST-E on January 21, 2016 assessing \$9,306 in administrative penalties with \$1,861 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 Jamal Jafari dba J & K Food Store, Docket No. 2015-0909-PST-E on January 21, 2016 assessing \$8,113 in administrative penalties with \$1,622 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CJF FAMILY, INC. dba Smile Mart, Docket No. 2015-0922-PST-E on January 21, 2016 assessing \$10,125 in administrative penalties with \$2,025 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Molecular Limited Partnership, Docket No. 2015-0958-AIR-E on January 21, 2016 assessing \$28,613 in administrative penalties with \$5,722 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 Monarch Utilities I.L.P., Docket No. 2015-0962-PWS-E on January 21, 2016 assessing \$357 in administrative penalties.

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 CRTX Properties LLC, Docket No. 2015-1009-PWS-E on January 21, 2016 assessing \$1,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EULA WATER SUPPLY CORPORATION, Docket No. 2015-1010-PWS-E on January 21, 2016 assessing \$172 in administrative penalties.

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 City of Anson, Docket No. 2015-1181-PWS-E on January 21, 2016 assessing \$750 in administrative penalties.

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 Adnan Najm dba Kathy's Sunmart, Docket No. 2014-0908-PST-E on January 28, 2016 assessing \$6,562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rolando Gonzalez dba Rolando's Welding and Fabricating, Docket No. 2014-1203-AIR-E on January 28, 2016 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of the Navy, Docket No. 2015-0229-MWD-E on January 28, 2016 assessing \$1,813.67 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Multisources, LTD, Docket No. 2015-0315-WR-E on January 28, 2016 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAS STAR ENTERPRISES, INC. dba 909 Grocery, Docket No. 2015-0346-PST-E on January 28, 2016 assessing \$2,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Charles Whitworth dba Johnny Whitworth Trucking, Docket No. 2015-0371-MSW-E on January 28, 2016 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shawn Mark Yarbrough dba Walnut Ridge Estates Water, Docket No. 2015-0405-PWS-E on January 28, 2016 assessing \$410 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HIGH GABRIEL WATER SUPPLY CORPORATION, Docket No. 2015-0540-PWS-E on January 28, 2016 assessing \$910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aris 786 Enterprise Inc. dba Orem Food Mart, Docket No. 2015-0551-PST-E on January 28, 2016 assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIKE INC. dba Beta C Store aka Alex's C-Store, Docket No. 2015-0587-PST-E on January 28, 2016 assessing \$5,191 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rickey G. Bockmon, Docket No. 2015-0863-WOC-E on January 28, 2016 assessing \$947 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201600529

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 3, 2016



Notice of Hearing

URI, INC.

SOAH Docket No. 582-16-0967

TCEQ Docket No. 2015-1268-UIC

Permit No. UR02827

APPLICATION.

URI, Inc. (URI) headquartered at 6950 South Potomac Street, Suite 300, Centennial, Colorado 80112, a uranium mining company, has submitted separate renewal and major amendment applications to the Texas Commission on Environmental Quality (TCEQ). The renewal application dated September 24, 2012 was for the renewal of TCEQ area Permit No. UR02827, which authorizes injection wells within the permitted area used for the continuance of groundwater restoration. The major amendment application dated December 12, 2012 requested amendment of the permit to provide authority to construct and operate injection wells for mining of uranium, which expired under the existing permit on September 1, 2012. Both of these applications are in accordance with 30 Texas Administrative Code (TAC) Chapter 331, including §§331.1 - 331.21, 331.41 - 331.48, 331.81 - 331.86, and

331.122. The applications were declared administratively complete on March 22, 2013. During the technical review process, URI submitted revisions to the applications to revise well plugging methods in the closure plan for Class III wells and to update the permit range table to include groundwater quality information from Class III wells located in Production Area 3.

The Kingsville Dome Mine is located approximately 8 miles southeast of the city of Kingsville, and 4 miles east of the town of Ricardo on 641 FM 1118, in Kleberg County, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or facility's general location. The online map is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.386944&lng=-97.775277&zoom=13&type=r>. For exact location, refer to application.

The TCEQ Executive Director has prepared a draft amended and renewal permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The applications, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the County Clerk's Office, Kleberg County Courthouse, 700 East Kleberg Avenue, Kingsville, Texas 78363.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - March 3, 2016

Kleberg County Courthouse Annex

1500 East King Avenue

Kingsville, Texas 78363

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 11, 2015. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 27, Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 331 and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687 4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. The mailing address for the TCEQ is P.O. Box 13087, Austin TX 78711-3087.

Further information may also be obtained from URI at 641 East FM 1118, Kingsville, Texas 78363, or by calling Mr. Dain McCoig, P.E. at (361) 595-5731.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 14, 2016**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 14, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: GLORIA FOOD MART INC d/b/a Gloria Food Mart; DOCKET NUMBER: 2014-1837-PST-E; TCEQ ID NUMBER: RN101723856; LOCATION: 703 West Rhapsody Drive, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$19,736; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks; DOCKET NUMBER: 2015-1395-MLM-E; TCEQ ID NUMBER: RN102398427; LOCATION: 2525 Southmore Avenue, Pasadena, Harris County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency

of any change or additional information regarding the UST system within 30 days of the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$8,750; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Jerry Alvarado; DOCKET NUMBER: 2015-0017-LII-E; TCEQ ID NUMBER: RN103391009; LOCATION: 1316 Blanco Court, Benbrook, Tarrant County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$936; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Joe Johnson and Frosty Farquhar d/b/a B & J Sand & Gravel; DOCKET NUMBER: 2014-1341-MLM-E; TCEQ ID NUMBER: RN105807598; LOCATION: northwest corner of the intersection of Reeder Street and Waco Street approximately 0.5 mile west of Skyline Drive, Kingsland, Llano County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 40 Code of Federal Regulations §122.26(c) and 30 TAC §281.25(a)(4), by failing to maintain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; TWC, §26.121(a)(1) and 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; and 30 TAC §342.25(a), by failing to register the site as an APO; PENALTY: \$13,750; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: M.I.S C-STORE L.L.C.; DOCKET NUMBER: 2014-1465-PST-E; TCEQ ID NUMBER: RN102346202; LOCATION: 730 South Colorado Street, Lockhart, Caldwell County; TYPE OF FACILITY: underground storage tank (UST) system at a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.51(a)(6), by failing to maintain all spill and overflow prevention devices in good operating condition; and 30 TAC §334.601(b), by failing to comply with UST operator training requirements; PENALTY: \$10,117; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: Moises Enrique Martinez d/b/a Moy's Custom Paint & Body Shop; DOCKET NUMBER: 2015-0435-AIR-E; TCEQ ID NUMBER: RN106200603; LOCATION: 802 Avenue H, Rosenberg, Fort Bend County; TYPE OF FACILITY: auto body and paint shop;

RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b), 30 TAC §116.110(a), and TCEQ Agreed Order Docket Number 2012-2016-AIR-E, Ordering Provisions Numbers 2.a. and 2.d., by failing to obtain the proper authorization prior to operating a surface coating facility; PENALTY: \$10,500; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: N R R ENTERPRISES INC. d/b/a Exxon Food Mart; DOCKET NUMBER: 2015-1051-PST-E; TCEQ ID NUMBER: RN101353530; LOCATION: 2468 Highway 69 North, Nederland, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; and THSC, §382.085(b) and 30 TAC §115.242(d)(3)(E), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is part of the approved system; PENALTY: \$3,681; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: OZARK BOTTLED WATER, INC. d/b/a Hill Country Springs; DOCKET NUMBER: 2015-0859-PWS-E; TCEQ ID NUMBER: RN101179521; LOCATION: 10019 South Interstate Highway 35, Austin, Travis County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notifications and submit copies of the public notifications to the executive director regarding: the failure to collect repeat coliform samples following a coliform-positive sample result, the failure to collect routine samples for coliform analysis, and the failure to provide a Surface Water Monthly Operating Report to the executive director; PENALTY: \$508; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(9) COMPANY: THURMAN TRANSPORTATION, INC.; DOCKET NUMBER: 2015-0590-WQ-E; TCEQ ID NUMBER: RN100680024; LOCATION: 4001 East Highway 67, Cleburne, Johnson County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew an APO registration annually as regulated activities continued; PENALTY: \$5,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201600475

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 2, 2016



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 14, 2016**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 14, 2016**. Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Gilbert Molina; DOCKET NUMBER: 2015-0652-LII-E; TCEQ ID NUMBER: RN107510547; LOCATION: 7110 Fallen Trail Drive, San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, installing, altering, repairing, or servicing an irrigation system; PENALTY: \$957; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Rebecca R. Norris d/b/a Papa Soliz Tacos; DOCKET NUMBER: 2015-0468-PST-E; TCEQ ID NUMBER: RN104367073; LOCATION: 10120 North Highway 146, Baytown, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.54(b)(2) and (d)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons and by failing to ensure that any residue from stored regulated substances which remain in the temporarily out-of-service USTs did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; 30 TAC §334.10(b)(1)(A) and §334.49(e), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.127(d), by failing to submit notice to the agency of any change or additional information concerning the status of the aboveground storage tank; PENALTY: \$10,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE:

Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: SERENE SCENES, LLC; DOCKET NUMBER: 2015-0200-LII-E; TCEQ ID NUMBER: RN106371180; LOCATION: 1017 Horseback Hollow, Austin, Travis County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.34(a), by using or attempting to use the license, including the license number, of an irrigator, installer, irrigation technician, or irrigation inspector to whom a license is issued; TWC, §37.003, Texas Occupations Code §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and TWC, §37.003 and 30 TAC §30.5(b), by advertising or representing itself to the public as a holder of a license or registration without possessing a current license or registration or employing an individual who holds a current license; PENALTY: \$11,213; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: Signal International Texas, L.P.; DOCKET NUMBER: 2015-0986-AIR-E; TCEQ ID NUMBER: RN100214303; LOCATION: 91 West Front Street, Orange, Orange County; TYPE OF FACILITY: marine and fabrication plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), and 30 TAC §122.143(4) and §122.146(2), and Federal Operating Permit Number O2397, General Terms and Conditions and Special Terms and Conditions Number 11, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$2,813; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201600474

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 2, 2016



Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of ALLIED TRADING CORPORATION dba A & Q Chevron Food Mart

SOAH Docket No. 582-16-2098

TCEQ Docket No. 2015-0941-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 3, 2016

William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 2, 2015 concerning assessing administrative penalties against and requiring certain actions of ALLIED TRADING CORPORATION dba A & Q Chevron Food Mart, for violations in Harris County, Texas, of: Texas Water Code §26.3475(d) and 30 Texas Administrative Code §334.49(c)(4)(C).

The hearing will allow ALLIED TRADING CORPORATION d/b/a A & Q Chevron Food Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford ALLIED TRADING CORPORATION d/b/a A & Q Chevron Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of ALLIED TRADING CORPORATION d/b/a A & Q Chevron Food Mart to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. ALLIED TRADING CORPORATION d/b/a A & Q Chevron Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, and Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Amanda Patel, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201600368

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 28, 2016



Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Myung Cha Cha dba Youngs Mart 3

SOAH Docket No. 582-16-2090

TCEQ Docket No. 2015-0713-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 3, 2016

William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed November 17, 2015 concerning assessing administrative penalties against and requiring certain actions of Myung Cha Cha dba Youngs Mart 3, for violations in Jim Wells County, Texas, of: Texas Water Code §26.3475(c)(1) and (d), 30 Texas Administrative Code §§37.815(a) and (b), 334.42(i), 334.49(c)(2)(C) and (c)(4), 334.50(d)(1)(B)(ii) and (d)(1)(B)(iii)(I), and 334.602(a).

The hearing will allow Myung Cha Cha d/b/a Youngs Mart 3, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Myung Cha Cha dba Youngs Mart 3, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Myung Cha Cha dba Youngs Mart 3 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Myung Cha Cha dba Youngs Mart 3, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 37, 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201600369
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 28, 2016



Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Robert M. Smith and OAK TERRACE ESTATES, INC.

SOAH Docket No. 582-16-2089

TCEQ Docket No. 2015-1108-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 3, 2016

William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 4, 2015 concerning assessing administrative penalties against and requiring certain actions of Robert M. Smith and OAK TERRACE ESTATES, INC. for violations in Polk County, Texas, of: Texas Health & Safety Code §341.0315(c) and 30 Texas Administrative Code §§290.46(d)(2)(A), (f)(2), (f)(3)(A)(i)(III), (f)(3)(A)(iii) and (iv), (f)(3)(B)(ii) and (iii), (m)(4), and 290.110(b)(4).

The hearing will allow Robert M. Smith and OAK TERRACE ESTATES, INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Robert M. Smith and OAK TERRACE ESTATES, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Robert M. Smith and OAK TERRACE ESTATES, INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Robert M. Smith and OAK TERRACE ESTATES, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

TRD-201600370

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 28, 2016



Notice of Receipt of Application and Intent to Obtain New Municipal Solid Waste Permit Proposed Permit Number 2389

APPLICATION. Progressive Waste Solutions of TX, Inc., 2301 Eagle Parkway, Suite 200, Fort Worth, Tarrant County, Texas 76177, a municipal solid waste facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Type V Transfer Station Permit Application to change the TCEQ authorization of the facility to allow the site to process additional municipal solid waste. The IESI Palestine Transfer Station is located at 517 ACR 3694, Palestine, Anderson County, Texas 75801. The TCEQ received this application on December 8, 2015. The permit application is available for viewing and copying at the Palestine Public Library, 2000 Texas Loop 256, Suite 42, Palestine, Anderson County, Texas 75801, and may be viewed online at <http://www.ftwweaverboos.com>. The following web site which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.8025&lng=-95.608333&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

CHANGE IN LAW. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in law.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to the TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas

Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Progressive Waste Solutions of TX, Inc., (IESI Transfer Station) at the address stated above or by calling Mr. Joseph Vieceli, Senior Engineer at (817) 632-4000.

TRD-201600528

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 3, 2016



Notice of Water Quality Application

The following notice was issued on January 14, 2016.

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, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

City of Levelland P.O. Box 1010, Levelland, Texas 79336, has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to TCEQ Permit No. WQ0010965001, to authorize a correction of the property boundary and buffer zone map description. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,800,000 gallons per day via surface irrigation of 475 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located approximately two miles southeast of the intersection of U.S. Highway 385 and State Highway 114, southeast of Levelland, and 2.5 miles southwest of the intersection of State Highway 114 and Farm-to-Market Road 3261, in Hockley County, Texas 79336.

TRD-201600527

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 3, 2016



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 December 7, 2015 through February 1, 2016. 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 Friday, February 5, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, March 7, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: West Gulf Marine, Inc.

Location: The project site is located in West Galveston Bay, State Tract 240, at 600 Harborside Drive, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: GALVESTON, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.298066° North; Longitude: 94.842552° West

Project Description: The applicant proposes to modify the permit to add mooring dolphins; to relocate existing structures and rip-rap; to dredge to a depth of 18 feet below mean low tide (MLT); to extend the time for maintenance dredging; and to install a concrete slab and bulkhead.

Specifically, the proposed components include the following activities:

- To dredge 100,000 cubic yards of material, to a depth of -18 feet MLT, by hydraulic means, within a previously authorized 6-acre dredge area
- The dredge material will be pumped to Ryan Marine's upland non-vegetated confined placement area
- To place 171 cubic yards of clean fill material into 0.094 acre of waters of the U.S. for backfill during the installation of 560 linear feet of bulkhead
- To relocate clean rip-rap to uplands during the installation of bulkhead and replace rip-rap on the outside of wall of bulkhead after installation
- To install a 12-inch concrete slab parallel to the bulkhead
- To install 2 mooring dolphins.

Equipment and materials associated with the proposed construction activities will be transported to the project site via truck and trailer, and/or barge and crane.

CMP Project No: 16-1139-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1994-02067. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Southwest Shipyard, L.P.

Location: The project is located in the San Jacinto River, at 18310 Market Street, in Channelview, Harris County, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.791620° North; Longitude: 095.063514° West

Project Description: The applicant proposes to construct 92 feet of bulkhead and place fill material into 0.09-acre of tidal waters of the United States for the purpose of connecting two existing piers thereby constructing a single large pier to be used to remove barges from the water for maintenance and repair.

CMP Project No: 16-1167-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1998-01114. This application will be reviewed

pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Ducks Unlimited

Location: The project begins at a point, along the northern shoreline of the Gulf Intracoastal Waterway (GIWW), and continues westward, for 3.3 miles, to the mouth of Carancahua Bayou, in Galveston County, Texas. The project site is located approximately 4 miles southwest of Tiki Island and 1-mile northeast of the mouth of Greens Lake, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: SEA ISLE, Texas.

LATITUDE & LONGITUDE (NAD 83):

Breakwater 1: Beginning - Latitude: 29.243308° North; Longitude: 95.013897° West

Ending - Latitude: 29.262419° North; Longitude: 94.994797° West

Breakwater 2: Beginning - Latitude: 29.266356° North; Longitude: 94.991789° West

Ending - Latitude: 29.282242° North; Longitude: 94.973489° West

Project Description: The applicant proposes to construct two 18- to 24-inch rock breakwaters, along a 3.3-mile section of the northern bank of the GIWW. Approximately 25,848 cubic yards of graded riprap will be utilized for construction of the breakwaters. The base of the breakwater will be approximately 20 feet wide and will be placed 10 to 150 feet from the existing eroded bank. The purpose of proposing two separate breakwaters is to allow natural tidal flushing and recreational boat traffic.

CMP Project No: 16-1107-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2015-00412. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action 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 Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201600508

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: February 2, 2016



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request

for an amendment to the Home and Community based-Services Program (HCS) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2018. The proposed effective date for the amendment is September 1, 2015, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Appendix C-1/C-3 Dental Treatment and Appendix J - The General Appropriations Act (House Bill 1), 84th Regular Session, 2015 adds additional funds to increase the service limit for dental treatment from \$1,000 during an individual plan of care (IPC) year to \$2,000 during an IPC year. The service limit will be increased for Waiver Years 4 and 5.
2. Appendix C-1/C-3 Prescribed Drugs (Extended State Plan Service) and Appendix J - Prescribed Drugs (Extended State Plan Service) The waiver is being changed to clarify eligibility for prescription drugs through the HCS waiver program. As a result of the transition from the fee-for-service delivery method to the managed care delivery method, effective September 1, 2014, individuals in the waiver who are enrolled in managed care for their acute care services receive unlimited prescription medications through managed care and therefore do not qualify for prescriptions through the waiver. Dual eligible individuals are excluded from enrollment into managed care and, thus, are still eligible for prescription medications through the waiver if they exhaust non-HCS waiver resources first (such as the Medicare Prescription Drug Plan and the Texas Medicaid State Plan resources). The acute versus waiver dollars for prescriptions will be revised to better reflect the source of funding for prescription costs.

The HCS waiver provides services and supports to persons with intellectual disabilities who live in their own homes or family homes, or in community settings such as small group homes. To be eligible for the waiver, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or may ask questions, request additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Jacqueline Pernell by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7477, or by email at TX_Medic-aid_Waivers@hpsc.state.tx.us.

TRD-201600509

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 2, 2016



Public Notice: STAR Kids Client Information Session

On February 20, 2016, from 9 a.m. to 11 a.m. at Texas Children's Hospital, West Campus, First Floor Conference Room, 18200 Katy Freeway (Interstate 10 and Barker Cypress), Houston, Texas 77094, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Commu-

nity-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

Contact: Heather Kuhlman, (512) 438-6356, Communications Specialist, Health and Human Services Commission, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600462

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 1, 2016



Public Notice: STAR Kids Client Information Session

On February 20, 2016, from noon to 2 p.m. at Texas Children's Hospital, West Campus, First Floor Conference Room, 18200 Katy Freeway (Interstate 10 and Barker Cypress), Houston, Texas 77094, the Texas Health and Human Services Commission (HHSC) will hold an information session for clients related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

Contact: Heather Kuhlman, (512) 438-6356, Communications Specialist, Health and Human Services Commission, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600463

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 1, 2016



Public Notice: STAR Kids Provider Information Session

On February 19, 2016, from 11 a.m. to 1 p.m. at Texas Children's Hospital, West Campus, First Floor Conference Room, 18200 Katy Freeway (Interstate 10 and Barker Cypress), Houston, Texas 77094, the Texas Health and Human Services Commission (HHSC) will hold an information session for providers related to the transition of various Medicaid services to the STAR Kids program.

Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities under the age of 21 who receive Supplemental Security Income Medicaid or are enrolled in home and community-based services waiver programs including Medically Dependent Children Program, Home and Community-based Services, Community Living Assistance and Support Services, Deaf Blind with Multiple Disabilities, Texas Home Living, and Youth Empowerment Services.

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

You can learn more about the STAR Kids program by visiting: <http://www.hhsc.state.tx.us/medicaid/managed-care/mmc/star-kids.shtml>.

Contact: Heather Kuhlman, (512) 438-6356, Communications Specialist, Health and Human Services Commission, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600465

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 1, 2016



Texas Higher Education Coordinating Board

Request for Proposals - Comprehensive Assessment of Alternative Student Loan Portfolio Operational Activities

Request for Proposals (RFP) Number **781-6-16142**

Texas Higher Education Coordinating Board (THECB) is soliciting proposals from interested, highly qualified, and experienced consulting firms to design and conduct a comprehensive assessment of the operational activities related to the agency's alternative student loan portfolio.

Scope of Work:

The Texas Higher Education Coordinating Board is a state of Texas Agency that provides leadership and coordination for the Texas higher education system. In addition to higher education policy development and grant administration, the Board also manages the Hinson-Hazlewood Loan Program. This program, in place since 1965, provides low interest, alternative student loans known as College Access Loans (CAL) for eligible Texas students attending institutions of higher education in Texas. The Board also administers the B-On-Time (BOT) loan program, a 0% forgivable loan program, and the Texas Armed Services Scholarship Program (TASSP), a service cancelable program. In addition to the loan products currently being offered, the Board is servicing and collecting a legacy portfolio of loans no longer being originated (e.g., Federal Family Education Loan Program, Health Education Assistance Loan, etc.). Loans for all programs are originated and serviced by the THECB. As of 12/16/2015, the Board's loan portfolio consists of 256,000 loans totaling \$1.3 billion. Additional information on the Board's loan programs can be found at <http://www.hhloans.com/>.

The THECB is currently in the process of transitioning its alternative student loan portfolio from HELMS to HELMS.NET, and its student loan interface from HELMNet2 to HELMNet3. The THECB is also embarking on the transition of the Texas Financial Aid Information Center (TFAIC) toll-free hotline from Texas Guaranteed Student Loan Corporation to the agency's Borrower Services unit.

The THECB is seeking assessments, observations, and recommendations regarding the management and administration of its alternative student loan portfolio.

- A. Document and map all processes related to the operational activities of the agency's student loan portfolio.
- B. Assess all operational activities against the Texas Education Code, Texas Administrative Code, and federal regulations, as they relate to the agency's alternative student loan portfolio.
- C. Complete time studies of primary operational activities within the agency's alternative student loan portfolio.
- D. Benchmark staffing levels in relation to other state and private alternative student loan programs.
- E. Benchmark expense ratios in relation to other state and private alternative student loan programs.
- F. Identify corrective measures necessary to align operational activities with state and federal statute and regulations.
- G. Provide recommendations for improving the operations, administration, communications, statute, and regulations as they relate to the agency's alternative student loan portfolio.
- H. Complete a staffing assessment regarding the agency's student loan portfolio, including, but not limited to, recommendations regarding appropriate staffing levels.
- I. Provide recommendations regarding the effective integration of TFAIC into the Borrower Services unit.
- J. Provide recommendations regarding software/technology that would improve the operational activities of the agency's alternative student loan portfolio.

RFP documentation may be obtained by contacting:

Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711-2788
(512) 427-6142

Theresa.lopez@thechb.state.tx.us

RFP documentation is also located on the THECB's website at:

[www.thechb.state.tx.us/Agency Info](http://www.thechb.state.tx.us/Agency%20Info)

And The Electronic state Business Daily

<http://esbd.cpa.state.tx.us/>

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. CT on March 07, 2016.

TRD-201600540

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016



Request for Qualifications - Quality Assurance Review of the Internal Audit and Compliance Monitoring Functions

Request for Qualifications (RFQ) Number 781-6-16141

The Texas Higher Education Coordinating Board (THECB) is seeking Request for Qualifications for a Quality Assurance Review of the Internal Audit and Compliance Monitoring Functions. The assessment must determine (1) the Internal Audit function's compliance with the International Standards for the Professional Practice of Internal Auditing promulgated by the Institute of Internal Auditors and (2) the Internal Audit and Compliance Monitoring functions' compliance with Generally Accepted Government Auditing Standards promulgated by the U.S. Government Accountability Office.

Scope of Work:

The selected respondent shall perform a Quality Assurance Review in compliance with applicable auditing standards and the Texas Internal Auditing Act. The review period is from September 1, 2013, through May 1, 2016.

The respondent shall:

- 1) Evaluate Internal Audit's compliance with the International Standards for the Professional Practice of Internal Auditing, and Generally Accepted Government Auditing Standards.
- 2) Evaluate Compliance Monitoring's compliance with Generally Accepted Government Auditing Standards.
- 3) Evaluate Internal Audit and Compliance Monitoring's quality control system and whether it provides reasonable assurance that audit products meet professional standards.
- 4) Hold a pre-exit conference between the Quality Assurance Review team and the Director, Internal Audit and Compliance, to discuss preliminary results of the Quality Assurance Review.
- 5) Present a written draft report to the Director, Internal Audit and Compliance, and offer an exit conference.

6) Prepare a separate management letter, incorporating best practices and suggestions to enhance work practices.

7) Incorporate responses from the Director, Internal Audit and Compliance, to reportable conditions into the final report.

8) Communicate the final report results through an oral presentation, at the October 20, 2016, Agency Operations Committee Meeting held at the THECB.

RFQ documentation may be obtained by contacting:

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711-2788

(512) 427-6142

Theresa.lopez@theeb.state.tx.us

RFQ documentation is also located on the THECB's website at:

[www.theeb.state.tx.us/Agency Info](http://www.theeb.state.tx.us/Agency%20Info)

And The Electronic State Business Daily

<http://esbd.cpa.state.tx.us/>

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. CT on March 04, 2016.

TRD-201600537

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 3, 2016

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by RADNOR SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wayne, Pennsylvania.

Application for admission to the State of Texas by STATESMAN INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indiana.

Application for DORSEY LIFE INSURANCE COMPANY to change its name to LILY LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Beaumont, Texas.

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-201600534

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: February 3, 2016

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Texas Lottery Commission

Powerball® Game Grand Prize Carry Forward Pool Maximum Balance Amounts and Balance Limiter Triggers

The Texas Lottery Commission's "Powerball®" On-Line Game Rule, at 16 TAC §401.317(d)(1)(B)(iii), provides that the Grand Prize Carry Forward Pool (GPCFP) shall have maximum balance amounts or balance limiter triggers that are set by the Multi-State Lottery Association (MUSL) Powerball Product Group and are detailed in the Comments to MUSL's Powerball Game Rules. By vote on January 27, 2016, to amend the Comments to the MUSL Powerball Game Rules, the MUSL Powerball Product Group established a balance limit trigger for the GPCFP as follows: Effective with the drawing on July 2, 2016, at any time that the GPCFP is below one hundred ninety nine million dollars (\$199,000,000) prior to a drawing, the GPCFP deduction from a Party Lottery's Grand Prize Pool contribution for that drawing shall be equal to ten percent (10%) of a Party Lottery's sales when the annuity Grand Prize, as determined after sales are known, exceeds three hundred million dollars (\$300,000,000.00); and the GPCFP deduction from a Party Lottery's Grand Prize Pool contribution for that drawing shall be equal to twenty percent (20%) of a Party Lottery's sales when the annuity Grand Prize, as determined after sales are known, exceeds eight hundred million dollars (\$800,000,000.00). At any time that the GPCFP exceeds one hundred ninety nine million dollars (\$199,000,000) prior to a drawing, there shall be no GPCFP deduction for that drawing.

TRD-201600395

Bob Biard

General Counsel

Texas Lottery Commission

Filed: January 29, 2016

◆ ◆ ◆
Scratch Ticket Game Number 1742 "Lucky 7"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1742 is "LUCKY 7". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1742 shall be \$5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1742.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 7 Symbol, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$250, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1742 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
48	FRET
49	FRNI
50	FFTY
7 SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$250	TWO FTY
\$1,000	ONE THOU
\$100,000	100 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

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, \$200, \$250, \$300, \$400 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1742), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1742-0000001-001.

K. Pack - A Pack of the "LUCKY 7" Scratch Ticket Game 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.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LUCKY 7" Scratch Ticket Game No. 1742.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "LUCKY 7" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the LUCKY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a Seven "7" Play Symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch 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 Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive Non-Winning Tickets within a Pack will not have matching 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 twenty (20) times.
- D. On winning and Non-Winning Tickets, the top cash prizes of \$100,000 and \$1,000 will each appear at least once, except on Tickets winning twenty (20) times.
- E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.
- F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.
- G. Tickets winning more than one (1) time will use as many LUCKY NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.
- H. No matching LUCKY NUMBERS Play Symbols will appear on a Ticket.
- I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 50 and \$50).
- J. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.
- K. On Non-Winning Tickets, a LUCKY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.
- L. The "7" (WINALL) Play Symbol will never appear as a LUCKY NUMBERS Play Symbol.
- M. The "7" (WINALL) Play Symbol will WIN ALL 20 PRIZES INSTANTLY as per the prize structure.
- N. The "7" (WINALL) Play Symbol will never appear more than once on a Ticket.
- O. The "7" (WINALL) Play Symbol will never appear on a non-winning Ticket.
- P. On Tickets that win with the "7" (WINALL) Play Symbol, no YOUR NUMBERS Play Symbol will match a LUCKY NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 7" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$250, \$300, \$400 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200, \$250, \$300, \$400 or \$500 Scratch Ticket Game. 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 of these Game Procedures.

B. To claim a "LUCKY 7" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch 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 Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY 7" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch 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 "LUCKY 7" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY 7" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket 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 Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1742. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1742 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	928,000	7.76
\$10	656,000	10.98
\$15	192,000	37.50
\$20	64,000	112.50
\$50	67,480	106.70
\$100	32,480	221.67
\$200	900	8,000.00
\$250	1,580	4,556.96
\$300	740	9,729.73
\$400	320	22,500.00
\$500	1,140	6,315.79
\$1,000	204	35,294.12
\$100,000	8	900,000.00

*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 3.70. 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 Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1742 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1742, 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-201600511
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 2, 2016



Public Utility Commission of Texas

Major Consulting Services Contracts

RFP No. 473-16-0981, Project No. 45134

Contract No. 473-16-0981 to conduct a study and make a report with recommendations to the Public Utility Commission of Texas analyzing alternative ratemaking mechanisms adopted by other states.

Consultant:

Christensen Associates Energy Consulting
 800 University Bay Drive
 Suite 400
 Madison, Wisconsin 53705-2299
 Contract No. 473-16-0981 expires January 15, 2017
 Compensation: \$95,000.00
 Draft report to PUCT due by April 15, 2016
 Contractor presentation of draft report by May 6, 2016
 Revised report to PUCT by May 30, 2016
 Final report to PUCT by June 17, 2016
 TRD-201600532
 Adriana Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: February 3, 2016

◆ ◆ ◆
Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 29, 2016, to amend a certificated service area for a service area exception within Carson and Gray Counties.

Docket Style and Number: Joint Application of Sharyland Utilities, L.P. and Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception in Carson and Gray Counties. Docket Number 45558.

The Application: Sharyland Utilities, L.P. (Sharyland) and Southwestern Public Service Company (SPS) filed a joint application for a service area boundary exception to allow Sharyland to provide service to a specific customer located within the certificated service area of SPS. SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 19, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45558.

TRD-201600510
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 2, 2016

◆ ◆ ◆
Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend a water certificate of convenience and necessity and to obtain a sewer certificate of convenience and necessity in Montgomery County.

Docket Style and Number: Application of Old Tamina Water Supply Corporation to Amend its Water Certificate of Convenience and Necessity for Dual Certification with the City of Shenandoah and to Obtain a Sewer Certificate of Convenience and Necessity in Montgomery County (37615-C, 37616-C), Docket Number 45552.

The Application: Old Tamina Water Supply Corporation filed an application to amend its water certificate of convenience (CCN) Number 12289 for a dual certification with the City of Shenandoah (Shenandoah) and obtain a new sewer CCN in Montgomery County. The total area being requested includes approximately 540 acres of land and 165 current customers.

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 through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45552.

TRD-201600490

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 2, 2016

◆ ◆ ◆
Notice of Petition for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 25, 2016, for true-up of 2013 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Big Bend Telephone Company for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 45546.

The Application: Big Bend Telephone Company (Big Bend) filed a true-up report in accordance with Findings of Fact Nos. 10-13 of the final Order in Docket No. 41654. In Docket No. 41654 the commission approved Big Bend's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses Big Bend's final and actual FUSF impact for 2013.

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 through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45546.

TRD-201600388
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 29, 2016

◆ ◆ ◆
Notice of Petition to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (Commission) to amend a water certificate of convenience and necessity (CCN) in Hays County.

Docket Style and Number: Application of Dripping Springs Water Supply Corporation to Amend a Certificate of Convenience and Necessity in Hays County, Docket Number 45536.

The Application: Dripping Springs Water Supply Corporation (Dripping Springs WSC) filed with the Public Utility Commission of Texas (Commission) an application to amend water certificate of convenience (CCN) No. 10315 in Hays County, Texas. Dripping Springs WSC seeks to amend the CCN to provide water utility service to an area of approximately 315 acres.

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 through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45536.

TRD-201600362
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2016



Notice of Request for Cease and Desist Order

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on January 25, 2016, of a request for a cease and desist order.

Docket Style and Number: Application of Cross Timbers Water Supply Corporation for a Cease and Desist Order against Argyle Water Supply Corporation, Docket No. 45547.

The Application: Cross Timbers Water Supply Corporation (Cross Timbers) seeks a cease and desist order directing Argyle Water Supply Corporation (Argyle) to cease and desist all activities to provide water utility service within Cross Timbers' single-certificated area in Denton County, Texas.

Cross Timbers contends that Argyle currently is providing water service to two homes on property that is located entirely in the certificate of convenience and necessity territory of Cross Timbers. Cross Timbers believes it is likely that since the boundaries have changed over the years, the provision of service by Argyle was probably done innocently; however, the property owner has a contract of sale with a developer and is planning to develop the property into 33 two-acre home sites. Cross Timbers is agreeable to Argyle continuing to provide water service to the two homes located on the property for an intermediate period of time, but requests all parties agree that when development on the property begins, all water will be supplied by Cross Timbers and Argyle will cease and desist from supplying water service to this property at that time.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45547.

TRD-201600375
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 28, 2016



Request for Proposal for Technical Consulting Services Related to Entergy Texas, Inc.'s Participation in an Orderly Transition Out of the Entergy System Agreement

RFP Number **473-16-00153**

The Public Utility Commission of Texas (PUCT) is issuing a Request for Proposals (RFP) for assistance in reviewing Entergy Texas, Inc.'s (ETI) participation in and orderly transition out of the Entergy System Agreement (ESA).

Scope of Work:

The PUCT is announcing its intent to extend its contract with Liberty Consulting Group (Liberty Consulting) for technical consulting services related to ETI's participation in and orderly transition out of the ESA. Liberty Consulting and the PUCT entered this contract in March

2014, after the PUCT chose Liberty Consulting through a competitive bidding process. The initial term of this contract is scheduled to end March 16, 2016, unless the parties renew it under the terms of the contract. Because of factors outside the parties' control, the work has not been completed and the funds set aside for the contract have not been expended.

Therefore, The PUCT is posting this RFP in accordance with Texas Government Code §2254.029, and intends to exercise the extension option in its existing contract with Liberty Consulting unless a better offer is received. The PUCT seeks to extend the contract for the shorter of one year or until the conclusion of the transition out of the ESA.

RFP documentation may be obtained by contacting:

Jay Stone
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7425

jay.stone@puc.texas.gov

RFP documentation is also located on the PUCT website at <http://www.puc.state.tx.us/agency/about/procurement/Default.aspx>.

RFP Release date is, Friday, February 12, 2016

Deadline for proposal submission is Monday, March 14, 2016, 2:00 p.m., CT

TRD-201600506
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 2, 2016



Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural and Engineering Services

The City of Edinburg, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Architectural/Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for services described below:

Airport Sponsor: City of Edinburg; TxDOT CSJ No. 16HGEDNBG; Scope: Provide architectural and engineering/design services, including construction administration, to assist in hangar expansion for airport facilities used by the Department of Public Safety (DPS) for emergency and first responders, including facilities where DPS aircraft are used for staging and storage purposes.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase is set at 11%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Ed Mayle.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "South Texas International Airport at Edinburg."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-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 no later than March 8, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation
200 East Riverside Drive
Austin, Texas 78704

Hand Delivery or Courier

TxDOT - Aviation
150 East Riverside Drive
5th Floor, South Tower
Austin, Texas 78704

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee

deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201600396
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 29, 2016



Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Mesquite, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for the current aviation project as described below.

Current Project: City of Mesquite; TxDOT CSJ No.: 1618MSQTE.

Scope: Provide engineering and design services, including construction management, to:

1. Rehabilitate and repair Runway 18-36;
2. Improve drainage between runway and parallel taxiway;
3. Replace medium intensity runway lights on Runway 18-36;
4. Install new medium intensity taxiway lighting system;
5. Replace airfield guidance signs and install others;
6. Install auxiliary power generator;
7. Repair asphalt drainage shoulders on Runway 18-36 and Taxiway "A" and Stub Taxiways; and
8. Repair Runway 18-36 ends and resurvey to 6,000'.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase of the current project is 0%. **The goal will be re-set for the construction phase.** TxDOT Project Manager is Paul Slusser.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Mesquite Metro Airport may include the following:

1. Rehabilitate terminal apron;
2. Rehabilitate north and south hangar access taxiways;
3. Rehabilitate parallel and stub taxiways;
4. Extend Runway 36;
5. Replace NAVAIDS;

6. Design and construct hangars; and
7. Update Airport Layout Plan.

The City of Mesquite reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Mesquite Metro Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

FIVE completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division no later than March 15, 2016, 4:00 p.m.

(CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation
200 East Riverside Drive
Austin, Texas 78704

Hand Delivery or Courier

TxDOT - Aviation
150 East Riverside Drive
5th Floor, South Tower
Austin, Texas 78704

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201600531
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 3, 2016



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://texasattorneygeneral.gov/og/open-government>

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

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

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

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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

1 TAC §91.1.....950 (P)

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