TEXAS REGISTER

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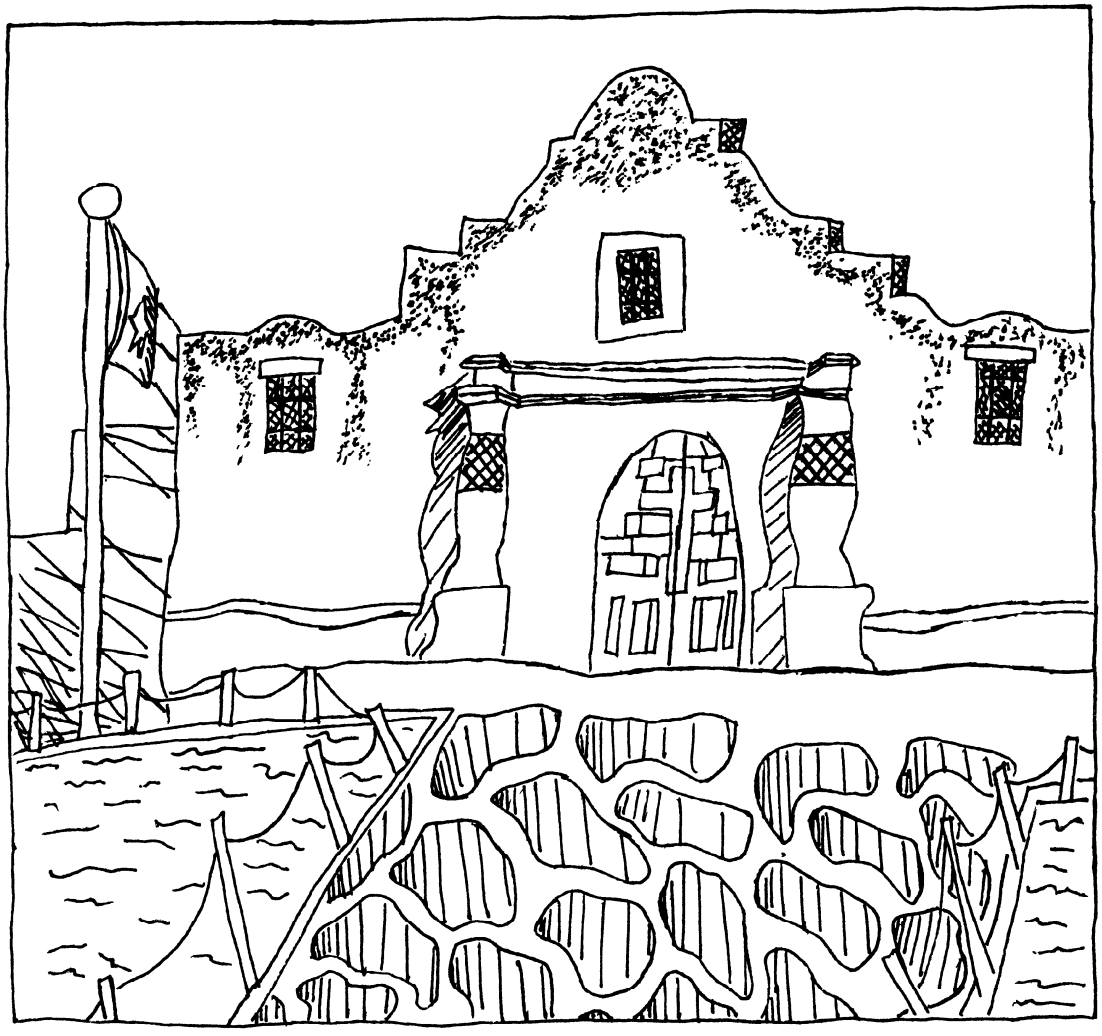

Jaime Vela

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

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

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ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

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

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

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

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

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

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

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

Additional information about state government may be found here:
http://www.state.tx.us/

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

THE GOVERNOR

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

Appointments

Appointments for February 3, 2009

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2013, Scott J. Boxer of Frisco (Mr. Boxer is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2013, Mark L. Rhea of Fort Worth (Mr. Rhea is being reappointed).

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2013, L. Elizabeth Gunter of Austin (Ms. Gunter is being reappointed).

Appointed to be a member of the Advisory Board of Athletic Trainers for a term to expire January 31, 2015, Martin Akins of Austin (replacing Lawrence Sampleton of Austin whose term expired).

Appointed to be a member of the Advisory Board of Athletic Trainers for a term to expire January 31, 2015, Rebecca Spurlock of North Richland Hills (Ms. Spurlock is being reappointed).

Appointed to be a member of the Sulphur River Regional Mobility Authority for a term to expire February 1, 2011, Donald Wall of Paris. Mr. Wall is being reappointed and will serve as presiding officer of the board.

Appointed to be a member of the Prepaid Higher Education Tuition Board for a term to expire February 1, 2015, Stephen N. Mueller of Cypress. Mr. Mueller is replacing Theresa Chang of Houston whose term expired.

Appointed to be the Injured Employee Public Counsel for a term to expire February 1, 2011, Norman W. Darwin of Weatherford. Mr. Darwin is being reappointed.

Appointed to be a member of the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 2011, Arthur Roger Matson of Georgetown. Mr. Matson is being reappointed.

Appointed to be a member of the State Cemetery Committee for a term to expire February 1, 2015, Scott P. Sayers, Jr. of Austin. Mr. Sayers is being reappointed and will serve as the presiding officer of the committee.

Appointed to be a member of the Texas Woman's University Board of Regents for a term to expire February 1, 2015, Lola Chriss of Rowlett (replacing Tegwin Pulley of Dallas whose term expired).

Appointed to be a member of the Texas Woman's University Board of Regents for a term to expire February 1, 2015, Ann Scanlon McGinity of Pearland (replacing William Fleming of Houston whose term expired).

Appointed to be a member of the Texas Woman's University Board of Regents for a term to expire February 1, 2015, Sue Bancroft of Argyle (replacing Harry Crumpacker of Prosper who was reappointed to fill an unexpired term).

Appointed to be a member of the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2011, Darwin "Dal" DeWees of San Angelo (reappointment).

Appointed to be a member of the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2011, Ted F. Conover of Tyler (reappointment).

Appointed to be a member of the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2011, Stanley Ray of Georgetown (reappointment).

Appointed to be a member of the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2011, Lisa Birkman of Round Rock (reappointment).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Joe A. Pennington of Raymondville (replacing Glenn Wilde of Lyford whose term expired).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Dario V. Guerra, Jr. of Edinburg (Mr. Guerra is being reappointed).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Arturo "Sonny" Hinojosa, Jr. of Edinburg (Mr. Hinojosa is being reappointed).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Frank "Jo Jo" White of Progreso Lakes (Mr. White is being reappointed).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Jimmie E. Steidinger of Donna (Mr. Steidinger is being reappointed.

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Sonia Kaniger of San Benito (Ms. Kaniger is being reappointed).

Appointed to be a member of the Rio Grande Regional Water Authority Board of Directors for a term to expire February 1, 2013, Jose "Joe" Barrera, III of Brownsville (Mr. Barrera is being reappointed).

Appointed to be a member of the Upper Neches River Municipal Water Authority for a term to expire February 1, 2015, Jesse D. Hickman of Palestine. Mr. Hickman is being reappointed.

Appointments for February 9, 2009

Appointed to be a member of the Parks and Wildlife Commission for a term to expire February 1, 2015, Rick L. Campbell of Center (replacing John Parker of Lufkin whose term expired).

Appointed to be a member of the Parks and Wildlife Commission for a term to expire February 1, 2015, S. Reed Morian of Houston (replacing J. Robert Brown of El Paso whose term expired).

Appointed to be a member of the Parks and Wildlife Commission for a term to expire February 1, 2015, Margaret Martin of Boerne (Ms. Martin is being reappointed).

Appointed to be the Commissioner of Workers' Compensation for a term to expire February 1, 2011, Roderick A. Bordelon, Jr. of Austin. Mr. Bordelon is being reappointed.

Appointed to be a member of the State Preservation Board for a term to expire February 1, 2011, Charlotte C. Foster of Houston. Ms. Foster is being reappointed.

Appointed to be the Inspector General for Health and Human Services for a term to expire February 1, 2010, Kelly Bart Bevers of Round Rock. Mr. Bevers is being reappointed.

Rick Perry, Governor

TRD-200900492

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Proclamation 41-3174

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in specified counties in Texas. The disaster proclamation was subsequently renewed through February 4, 2009, in the wake of Hurricane Ike.

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas.

WHEREAS, Hurricane Ike continues to create a state of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Anderson, Angelina, Aransas, Archer, Austin, Bell, Bexar, Bowie, Brazoria, Brazos, Burleson, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Coryell, Dallas, Denton, Ellis, El Paso, Fort Bend, Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lavaca, Leon, Liberty, Limestone, Lubbock, Madison, Marion, Matagorda, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Waller, Walker, Washington, Webb, Wharton, Williamson, Wise and Wood.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

The renewal of the disaster proclamation becomes effective on February 5, 2009, and shall remain in effect until March 6, 2009, unless renewed or terminated.

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 4th day of February, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200900524

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THE ATTORNEY GENERAL

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

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

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

Office of the Attorney General

Requests for Opinions

RQ-0780-GA

Requestor:

The Honorable Heather Hollub

25th Judicial District Attorney

113 South River, Suite 205

Seguin, Texas 78155

Re: Whether an elected county official may occupy leased county space in an office building owned by the spouse of the elected official (RQ-0780-GA)

Briefs requested by March 5, 2009

RQ-0781-GA

Requestor:

Mr. Duane Waddill, Executive Director

Texas Residential Construction Commission

Post Office Box 13509

Austin, Texas 78711-3509

Re: Whether the State Library and Archives Commission may require a state agency to create and maintain written minutes of the agency's public meetings (RQ-0781-GA)

Briefs requested by March 9, 2009

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

TRD-200900546
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 11, 2009

♦ ♦ ♦

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). 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 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.51 concerning General Requirements by adding new subsections.

The amendments concern the time period for satisfaction of application requirements for persons who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the commission will extend the expiration date of the application for a period of four months in order to complete any examination or fingerprinting requirement. The provisions do not apply to any application that expired prior to September 7, 2008.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt amendments to §535.51 concerning General Requirements for applicants for a salesperson or broker license residing or whose principal place of business is in the Texas counties detailed above and who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under The Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendments.

§535.51. General Requirements.

(a) - (e) (No change.)

(f) By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may extend a license or registration application expiration date for an existing applicant who satisfies the following criteria:

(1) the applicant resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the applicant is unable to satisfy any examination requirement or provide fingerprints to the Department of Public Safety within six months from the date the application is filed; and

(3) the existing application expires on or before February 28, 2009;

(g) If an applicant meets the criteria in subsection (f) of this section, the expiration date of the application is extended for an additional four month period and the applicant must complete all requirements within such four month period or the application shall be considered void and subject to no further evaluation or processing.

(h) Subsections (f) and (g) of this section do not apply to an application that expired prior to September 7, 2008.

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

Filed with the Office of the Secretary of State on February 2, 2009.

TRD-200900399
Loretta R. DeHay
Interim Administrator
Texas Real Estate Commission
Effective Date: February 2, 2009
Expiration Date: March 23, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER I. LICENSES

22 TAC §535.95

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.95 concerning Miscellaneous Provi-

sions Concerning License or Registration Renewals by adding new subsections.

The amendments concern satisfaction of Salesperson Annual Education (SAE), Mandatory Continuing Education, (MCE), fingerprinting requirements, payment of fees, and other renewal requirements for licensees who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the Texas Real Estate Commission will defer renewal of licenses for salespersons, broker, and easement and right-of-way agents who are unable to timely renew and otherwise meet all renewal requirements for an active license because of Hurricane Ike. The amendments permit affected real estate salespersons and brokers to take up to four months to complete all of the renewal requirements under Chapter 1101 of the Texas Occupations Code. The extension option will be available only for licensees who satisfy the criteria in the rule and whose licenses expire between September 30, 2008 and February 28, 2009. For licenses that expire after that period, the license renewal is subject to the Texas Real Estate License Act (the Act) and existing Rules. If a licensee fails to pay the renewal fees within the four month period, the license will expire at the end of the four month period. If a licensee fails to get fingerprinted or complete continuing education, the license will go inactive at the end of the four month period until such time that the licensee meets all renewal requirements.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt amendments to §535.95 concerning licensing renewals requirements for licensees residing in or whose principal place of business is in the Texas counties detailed above who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under the Act, Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

§535.95. Miscellaneous Provisions Concerning License or Registration Renewals.

(a) - (e) (No change.)

(f) Renewal requirements for a license or registration significantly impacted by Hurricane Ike. By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may defer the renewal requirements for a current license or registration and maintain the license or registration on active status for a licensee or registrant (licensee) who satisfies the following criteria:

(1) the licensee resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the licensee is unable to perform one or more of the following renewal requirements before the original expiration date of the current license:

(A) complete all applicable annual or continuing education requirements;

(B) provide fingerprints to the Texas Department of Public Safety; or

(C) pay renewal fees; and

(3) the original expiration date of the current license is between September 30, 2008 and February 28, 2009.

(g) If a licensee subject to subsection (f) of this section is unable to perform any renewal requirement prior to the original expiration date of the current license, the license is extended for an additional four month period and the licensee must complete all renewal requirements within such four month period in order to maintain the license on active status.

(h) If a licensee subject to subsection (f) of this section fails to file the required renewal application and pay the required fee on or before the end of the four month period, the license will expire at the end of the four month period. If, on or before the end of the four month period a licensee has filed the required renewal application and paid the required renewal fee but has failed to complete all applicable annual or continuing education requirements or to provide required fingerprints to the Texas Department of Public Safety, the license will revert to inactive status at the end of the four month period until such time that the licensee completes all renewal requirements.

(i) A license subject to Mandatory Continuing Education (MCE) requirements that is renewed under subsection (f) of this section expires 24 months after the original expiration date of the current license. A license subject to Salesperson Annual Education (SAE) requirements that is renewed under subsection (f) of this section expires 12 months after the original expiration date of the current license. SAE or MCE courses completed after the original expiration date of the current license under subsection (g) of this section may not be applied to meet MCE requirements for the following renewal of the license.

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

Filed with the Office of the Secretary of State on February 2, 2009.

TRD-200900400
Loretta R. DeHay
Interim Administrator
Texas Real Estate Commission
Effective Date: February 2, 2009
Expiration Date: March 23, 2009
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.216

The Texas Real Estate Commission adopts on an emergency basis amendments to §535.208 concerning Application for a License and §535.216 concerning Renewal of License by adding new subsections.

The amendments concern satisfaction of renewal and application requirements for home inspector licensees and applicants who reside or whose principal place of business is in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington Counties and who were significantly affected by Hurricane Ike.

The amendments outline the conditions under which the commission will defer renewal of home inspector licenses for licensees who are unable to timely renew and otherwise meet all renewal requirements for an active license because of Hurricane Ike. The amendments permit affected home inspectors to take up to four months to complete all of the renewal requirements under Chapter 1102 of the Texas Occupations Code. The extension option will be available only for licensees who satisfy the criteria in the rule and whose licenses expire between September 30, 2008 and February 28, 2009. For licenses that expire after that date, the license renewal is subject to the Texas Real Estate License Act (the Act) and existing Rules. If a licensee fails to pay the renewal fees within the four month period, the license will expire at the end of the four month period. If a licensee fails to complete continuing education or provide proof of liability insurance coverage, the license will go inactive at the end of the four month period until such time that the licensee meets all renewal requirements.

For persons with pending applications for a home inspector license who are impacted by Hurricane Ike and live or work in the counties described above, the emergency amendments extend the expiration date of the application for a period of four months in order to complete any examination requirement. The provisions do not apply to any application that expired prior to September 7, 2008.

As a result of the proclamations by the Governor of the State of Texas dated September 7, and 12, 2008, declaring a state of emergency due to Hurricane Ike, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning emergency rulemaking have been satisfied to adopt amendments to §535.208 concerning Application for a License and §535.216 concerning Renewal of License for licensees and applicants residing in or whose principal place of business is in the Texas counties detailed above who were significantly affected by Hurricane Ike.

The amendments are adopted on an emergency basis under the Act, Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the adopted amendments.

§535.208. Application for a License.

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

(g) By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may extend a license or registration application expiration date for an existing applicant who satisfies the following criteria:

(1) the applicant resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the applicant is unable to satisfy the examination requirement within six months from the date the application is filed; and,

(3) the existing application expires on or before February 28, 2009.

(h) If an applicant meets the criteria in subsection (g) of this section, the expiration date of the application is extended for an additional four month period and the applicant must satisfy the examination requirement within such four month period or the application shall be considered void and subject to no further evaluation or processing.

(i) Subsections (g) and (h) of this section do not apply to an application that expired prior to September 7, 2008.

§535.216. Renewal of License.

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

(g) Renewal requirements for an apprentice, real estate, or professional home inspector significantly impacted by Hurricane Ike. By the proclamation issued September 7, 2008, and amended September 12, 2008, by the Governor of the State of Texas and notwithstanding any provisions of the Act or Rules to the contrary, the commission may defer the renewal requirements for a current license and maintain the license on active status for a licensee who satisfies the following criteria:

(1) the licensee resides or has a primary place of business in Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, or Washington County and was significantly impacted by Hurricane Ike;

(2) as a result of the disaster, the licensee is unable to perform one or more of the following renewal requirements before the original expiration date of the current license:

(A) complete all applicable continuing education requirements;

(B) provide proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102; or

(C) pay renewal fees; and,

(3) the original expiration date of the current license is between September 30, 2008 and February 28, 2009.

(h) If a licensee subject to subsection (g) of this section is unable to perform any renewal requirement prior to the original expiration date of the current license, the license is extended for an additional four month period and the licensee must complete all requirements within such four month period.

(i) If a licensee subject to subsection (f) of this section fails to file the required renewal application and pay the required fee on or before the end of the four month period, the license will expire at the end of the four month period. If, on or before the end of the four month period a licensee has filed the required renewal application and paid the required renewal fee but has failed to complete all continuing education requirements or to provide proof of required liability insurance, the license will revert to inactive status at the end of the four month period until such time that the licensee completes all renewal requirements.

(j) A license that is renewed under subsection (g) of this section expires 24 months after the original expiration date of the current license. Continuing education courses completed after the original expiration date of the current license under this provision may not be applied to meet continuing education requirements for the following renewal of the license.

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

Filed with the Office of the Secretary of State on February 2, 2009.

TRD-200900401
Loretta R. DeHay
Interim Administrator
Texas Real Estate Commission
Effective Date: February 2, 2009
Expiration Date: March 23, 2009
For further information, please call: (512) 465-3900

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER A. GENERAL

1 TAC §155.1

The State Office of Administrative Hearings (SOAH) proposes an amendment to Subchapter A, General, §155.1 (concerning Purpose) in order to adopt the procedural rules of the Comptroller of Public Accounts that address the hearing process in matters referred by the Comptroller pertaining to protesting preliminary findings of taxable value.

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

Mr. Sullivan also has determined that for the first five-year period the amended rule is in effect the public benefit anticipated as a result of the rule will be in clarifying and detailing the procedures required to protest preliminary findings of the taxable value of property. There will be no effect on small businesses as a result of enforcing the rule. Additionally, because these hearings are not governed by the Administrative Procedure Act and have accelerated deadlines required in order to finalize the findings of taxable value in time to determine state funding for school districts for the next fiscal year, they have historically been subject to simplified and expedited procedures tailored to these circumstances. In this context, SOAH determines that adoption of the Comptroller's procedural rules for these hearings is warranted. The proposed amendment would have no fiscal impact on small businesses, and there is no anticipated economic cost to individuals who are required to comply with the amended rule.

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

The amendment is proposed under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and provides that the procedural rules of another state agency apply in SOAH hearings only if the SOAH rules adopt them by reference.

The provisions relate to the authority of SOAH under Government Code, Chapter 2003, and implement Government Code, Chapter 403, §403.303, which concerns protests of the comptroller's preliminary certification of school district total taxable property value.

§155.1. Purpose.

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

(e) SOAH adopts by reference the procedural rules of the Comptroller of Public Accounts that address the hearing process in matters referred by that agency pertaining to protesting preliminary findings of taxable value. These rules are set out in 34 TAC Chapter 9, Subchapter L (relating to Procedures for Protesting Preliminary Findings of Total Taxable Value).

(f) [~~(e)~~] Under Tex. Gov't Code §815.102, the procedural rules of the Employees Retirement System of Texas (ERS) govern the formal contested case process in matters it refers to SOAH.

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

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900421
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 475-4931

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.8

The Texas Higher Education Coordinating Board proposes new §21.8, concerning definition of student's financial need. Specifically, proposed new §21.8 would provide a general definition of student's financial need. Certain sections of the Texas Education Code, such as §56.011(b) regarding set-asides from designated tuition, indicate institutions are to award funds to students who "must establish financial need in accordance with rules and procedures established by the Texas Higher Education Coordinating Board." Currently, the term "financial need" is defined in Coordinating Board rules for individual financial aid programs,

but there is no generic definition in our rules of "student financial need." New §21.8 would provide this definition.

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

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

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, §56.011(b) and §56.012(b), which gives the Coordinating Board the authority to adopt rules that will provide for the efficient and uniform application of this section.

The new section affects the Texas Education Code, §56.011 and §56.012.

§21.8. Definition of Student's Financial Need.

Unless otherwise specified in statute or rule, a student's financial need is defined as the difference between the student's cost of attendance as determined by the institution and the student's expected family contribution as calculated using the United States Department of Education's federal methodology.

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

Filed with the Office of the Secretary of State on February 4, 2009.

TRD-200900441
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 30, 2009
For further information, please call: (512) 427-6114

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SUBCHAPTER OO. MEDICAID CHILDREN'S LOAN REPAYMENT PROGRAM

19 TAC §§21.2200 - 21.2207

The Texas Higher Education Coordinating Board proposes new §§21.2200 - 21.2207 concerning Medicaid Children's Loan Repayment Program. Specifically, House Bill 15, §19(d), 80th Texas Legislature, instructs the Texas Health and Human Services Commission (HHSC) to develop a plan (contingent on applicable approval by the federal judiciary and pursuant to the Joint Motion in Frew v. Hawkins), that details the proposed expenditure of funds in a manner that addresses the requirements of the Consent Decree, the Joint Motion, and the judicially-approved Correction Action Plans in Frew v. Hawkins, to the extent those judicially-approved Corrective Action Plans supersede the Joint Motion. The Frew expenditure plan was approved by the Governor's Office of Budget, Planning, and Policy and the Legislative Budget Board (LBB) in October 2007. The Frew expenditure plan included Appendix D, Strategic Initiatives Received from Public Stakeholders, which indicates to achieve the objective of increasing participation of medical and dental providers who serve children in the Texas Medicaid program, HHSC should fund or establish well-structured loan repayment programs with a particular emphasis on primary care. It is anticipated that by the time these rules are finally adopted, the Texas Higher Education Coordinating Board (THECB) will have entered into a memorandum of understanding with the Texas Health and Human Services Commission, under which the THECB serves as a fiscal disbursing agent for the Medicaid Children's Loan Repayment Program. The program will enroll up to 300 physicians and dentists per year, and the State may prioritize the applications based on particular specialties or locations. Once the program is fully implemented, HHSC anticipates that it will provide loan repayments for up to 1,200 physicians and dentists per year. Each doctor will be eligible for up to $140,000 in loan repayments over four years if he or she meets targets for services provided to Medicaid eligible children. The loan repayment program is expected to cost about $300,000 in state funding in fiscal year 2010, with the cost growing to $42.6 million a year once the program achieves the maximum number of participants after four years. The new sections establish definitions and identify the eligibility requirements for provider, education loan, and lender or holder of loan.

Mr. Dan Weaver, Assistant Commissioner, Business & Support Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal impact to local government, but the fiscal implications to state government as a result of enforcing or administering the new sections are estimated to be the following: $297,480 in FY2009, $12,573,922 in FY2010, $21,577,514 in FY2011, $33,653,074 in FY2012, and $42,644,542 in FY2013.

Mr. Weaver has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the sections will be that there will be improved access to medically necessary services for members of the plaintiff class in the Frew V. Hawkins lawsuit styled "Linda Frew, et al. v. Albert Hawkins, et al., Civil Action No. 3:93CA65 (U.S. Dist. - E.D. Tex.). 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 Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, Article III of the General Appropriations Act of the 80th Texas Legislature, and House Bill 15, §19(d), 80th Texas Legislature.

The new sections affect Article III of the General Appropriations Act of the 80th Texas Legislature; Texas Education Code §§61.027, 61.531 - 61.539, 61.901, 61.91; and 19 Texas Administrative Code §§21.251 - 21.263 and 21.560 - 21.566.

§21.2200. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in House Bill 15, §19(d), 80th Legislature, Regular Session.

(b) Purpose. The purpose of the Medicaid Children's Loan Repayment Program is to encourage qualified physicians and dentists to ensure adequate access to health care services, including primary care and subspecialty medical and dental services and utilization of appropriate and necessary health care services by Medicaid enrollees under the age of 21.

§21.2201. Administration.

The Texas Higher Education Coordinating Board, or its successor or successors, shall enter into an agreement with the Texas Health and Human Services Commission (HHSC) and/or the Texas Department of State Health Services (DSHS) to administer the disbursement processes of the Medicaid Children's Loan Repayment Program. The agreement shall describe the respective roles and responsibilities of the Coordinating Board, the Texas Health and Human Services Commission and the Texas Department of State Health Services, including application review and selection, compliance monitoring, dissemination of information, and funds disbursement.

§21.2202. Dissemination of Information.

The Board shall provide a web link, on the appropriate Board web page(s), to the DSHS Internet site providing information about the program.

§21.2203. Definitions.

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

(1) Board--the Texas Higher Education Coordinating Board.

(2) Commissioner--the Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) DSHS--the Texas Department of State Health Services.

(4) HHSC--the Texas Health and Human Services Commission.

(5) Medicaid--the State and Federal cooperative venture that provides medical coverage to eligible needy persons.

(6) Program--the Medicaid Children's Loan Repayment Program.

(7) Service period--a twelve-month period during which a physician qualifies for repayment of education loans.

§21.2204. Provider Eligibility Requirements.

Applicants must:

(1) ensure that an application has been received by DSHS by the established deadline;

(2) hold an unrestricted license from the Texas Medical Board or the Texas State Board of Dental Examiners;

(3) if practicing in a subspecialty, be certified by or be eligible to sit for the applicable subspecialty board;

(4) have a Medicaid provider number;

(5) not be currently fulfilling an obligation to provide medical or dental services in the eligible area or facility;

(6) fulfill the four-year service obligation in the Medicaid Children's Loan Repayment Program before qualifying for loan repayment through any other state loan repayment program; and

(7) provide eligible services for four consecutive years and meet the target number of Medicaid visits by children under the age of 21 for each 12-month period as indicated on the following table:
Figure: 19 TAC §21.2204(7)

§21.2205. Eligible Education Loan.

To be eligible for repayment, an education loan must:

(1) have been made for undergraduate, graduate, or medical education at an accredited institution in the United States;

(2) not have been made during residency;

(3) not be from a loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(4) not have an existing service obligation;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program; and

(6) not be consolidated with non-education loans or with loans obtained by someone other than the provider applying for loan repayment.

§21.2206. Eligible Lender or Holder.

The Board shall retain the right of determining 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, medical and graduate medical education.

(1) 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, pension fund, private foundation, or insurance company.

(2) An eligible lender or holder shall not be any private individual.

§21.2207. Repayment of Education Loans.

The total annual repayment to one or more eligible lenders or holders shall not exceed the applicant's unpaid loan balance.

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900507
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 30, 2009
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION
SUBCHAPTER B. STATE BOARD OF EDUCATION: PURCHASING AND CONTRACTS

19 TAC §30.21

The State Board of Education (SBOE) proposes an amendment to §30.21, concerning the historically underutilized business (HUB) program. The section addresses the HUB program, as required by statute. The proposed amendment would update the rule to reflect the transfer of HUB rules from the Texas Building and Procurement Commission (TBPC) to the Comptroller of Public Accounts.

Texas Government Code, §2161.003, directed each state agency to adopt the state's HUB rules as its own rules. Those rules applied to state agency construction projects and purchases of goods and services paid for with appropriated money. To comply with statute and on the advice of Texas Education Agency legal counsel, the SBOE adopted effective December 5, 2004, 19 TAC §30.21, Historically Underutilized Business (HUB) Program, which adopted by reference the TBPC rules concerning the HUB program.

House Bill 3560, 80th Texas Legislature, 2007, transferred certain procurement duties and powers, and the rules related to those duties and powers, from the TBPC to the Comptroller of Public Accounts. The rules concerning the HUB program were transferred and codified as new 34 TAC §§20.11 - 20.28 effective September 1, 2007. In conjunction with the adoption of the review of SBOE rules in 19 TAC Chapter 30, Subchapter B, during its January 2009, meeting the SBOE approved for first reading and filing authorization the proposed amendment to 19 TAC §30.21. The proposed amendment would update the SBOE's rule to reflect the transfer of HUB rules from the TBPC to the Comptroller of Public Accounts.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be defining the SBOE's policy for implementing the HUB program, as required by statute. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Government Code, §2161.003, which authorizes the State Board of Education to adopt the HUB rules of the state as its own rules.

The amendment implements the Texas Government Code, §2161.003.

§30.21. Historically Underutilized Business (HUB) Program.

In accordance with the Texas Government Code, §2161.003, the State Board of Education adopts by reference the rules of the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~], found at Title 34 [~~1~~] Texas Administrative Code, §§20.11-20.28 [~~§§111.11-111.28~~], concerning the Historically Underutilized Business (HUB) Program.

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

Filed with the Office of the Secretary of State on February 5, 2009.

TRD-200900445
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.6

The Texas State Board of Dental Examiners (Board) proposes new §115.6. The new section establishes a reference to the recordkeeping standard of care relating to dental hygiene practice.

Ms. Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

Sherri Sanders Meek, Executive Director of the Texas State Board of Dental Examiners, has determined that the public benefit anticipated as a result of enforcing or administering this section will be to ensure that a patient record of dental hygiene treatments will be appropriately made, maintained and kept.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

This section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

§115.6. Records.

A Texas dental hygiene licensee practicing dental hygiene in Texas shall record treatments delegated by a Texas licensed dentist and performed for and upon each dental patient for reference, identification, and protection of the patient, the dentist, and the dental hygienist. Such recordings shall be entered in the dental records maintained and kept by the delegating dentist.

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

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900450
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 475-0972

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2, §217.4

The Texas Board of Nursing (Board) proposes amendments to §217.2, concerning Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions, and §217.4, concerning Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.

Currently, §217.2(a)(4)(B) permits an applicant for vocational nurse licensure who has attended a (Texas-based) professional nursing education program to substitute completion of an acceptable level of a Board-approved professional nursing education program, as determined by the Board. Because students in professional education programs are prepared for the professional role and do not typically study the differentiation of professional versus vocational roles, this provision no longer has its intended effect. As such, the proposed amendment to §217.2(a)(4)(B) is necessary to eliminate this provision so that all licensed vocational nurse applicants must complete approved vocational education programs for initial licensure under §217.2.

Currently, §217.4(a)(1)(B) permits an applicant for vocational nurse licensure who was educated in a program outside of United States jurisdictions to substitute (i) completion of curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs in lieu of (ii) completion of an approved vocational nursing education program. In essence, §217.4(a)(1)(B) allows licensed vocational nurse applicants to substitute the completion of a professional nursing education program for the completion of a vocational nursing education program for purposes of initial licensure under §217.4. Because the scopes of practice of vocational nurses and professional nurses are different, however, and because nursing education programs outside of United States jurisdictions do not address the vocational nursing role, this provision no longer has its intended effect. As such, the proposed amendment to §217.4(a)(1)(B) is necessary to eliminate this provision so that all licensed vocational nurse applicants must complete approved vocational education programs for initial licensure under §217.4. The proposed amendment to §217.4(e) is necessary to provide qualifying nurses the opportunity to participate in clinical experiences in Texas prior to taking an NCLEX exam. Specifically, the proposed amendment will allow certain nurses who have graduated from accredited nursing programs outside the United States to apply to the Board for a six month accustomation permit. This six month accustomation permit will allow a qualifying nurse to participate in nursing education courses and clinical experiences in Texas. Currently, a nurse who has graduated from an accredited nursing program outside the United States does not have access to education courses or clinical experiences designed to facilitate a transition to United States nursing practice. As a result, many of these nurses find it difficult to acclimate to the nuances of the United States healthcare system and to pass an NCLEX exam. The intended purpose of the proposed amendment is to ease the transition of these nurses into the United States healthcare system and to facilitate a higher passage rate of the NCLEX exam. In order for an applicant to be eligible for an accustomation permit, the applicant must have graduated from an accredited nursing program outside the United States, may not have taken the NCLEX-PN (applicants for vocational license) or the NCLEX-RN (applicants for professional license) prior to applying for the accustomation permit, and must successfully complete a credential evaluation service from one of the following Board approved credentialing agencies: (i) the Commission on Graduates of Foreign Nursing Schools; (ii) the Educational Records Evaluation Service; or (iii) the International Education Research Foundation. Additionally, certain restrictions are being proposed in order to ensure that the public is properly protected once an accustomation permit is approved. Upon receipt of the accustomation permit, the applicant may only participate in nursing education courses and clinical experiences under the direct supervision of a registered nurse who holds an unencumbered Texas license. Proposed amended §217.4(e) also makes clear that an applicant may not be left alone with a patient at any time. These limiting conditions are necessary to maintain a safe environment for patients and others and to ensure the highest quality of nursing care.

The following is a section-by-section overview of the proposal.

The proposed amendment to §217.2(a)(4)(B) eliminates subparagraph (B) in its entirety, which states "who have attended a professional nursing education program shall meet all of the requirements for licensure by examination as stated in this section, but may substitute completion of an acceptable level of a board-approved professional nursing education program as determined by the board". The remaining amendments to §217.2 re-designate the remaining subparagraph accordingly.

The proposed amendment to §217.4(a)(1)(B) removes the phrase "or curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs" from subparagraph (B). The proposed amendment to §217.4(e)(1) permits an applicant who has graduated from an accredited nursing program outside the United States to apply to the Board for a six month accustom-

ation permit by completing an application and paying a fee. Further, proposed amended §217.4(e)(1) permits an applicant holding an accustomation permit to participate in nursing education courses and clinical experiences. Proposed amended §217.4(e)(2) provides that an applicant is eligible to apply for an accustomation permit only if the applicant has: (i) graduated from an accredited nursing program outside the United States; (ii) never taken the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants); and (iii) successfully completed a credential evaluation service from a board approved credentialing agency. Proposed amended §217.4(e)(3) requires an applicant holding an accustomation permit to participate in nursing education courses and clinical experiences under the direct supervision of a registered nurse who holds a current and unencumbered Texas license only. Finally, proposed amended §217.4(e)(3) prohibits an applicant from being left alone with a patient at any time. The remaining amendments to §217.4 re-designate the remaining subsections accordingly.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be: (i) the removal of provisions that no longer yield their intended effect; and (ii) the opportunity for qualifying nurses who have graduated from an accredited nursing program outside the United States to participate in nursing education courses and clinical experiences prior to taking an NCLEX exam. It is anticipated that the participation in these educational courses and clinical experiences will assist qualifying nurses with the transition into the United States' healthcare system and will increase the passage rate of the NCLEX exam, ultimately resulting in additional qualified and trained nurses. Proposed amended §217.4(e) prescribes requirements for applicants applying for an accustomation permit. No person is required by law to apply for an accustomation permit. However, for those qualifying individuals who seek to participate in nursing education courses and clinical experiences prior to taking an NCLEX exam and who choose to apply for an accustomation permit under proposed amended §217.4(e), there will be associated costs of compliance with the proposal. Proposed amended §217.4(e) requires an applicant for an accustomation permit to submit an application to the Board. The total probable cost of completing and submitting an application to the Board should be less than $25. Further, each applicant is required to submit a $25 fee with each accustomation permit application. Finally, in order to be eligible for an accustomation permit under proposed amended §217.4(e), each applicant is required to complete a credential evaluation service from one of the following board approved credentialing agencies: (i) the Commission on Graduates of Foreign Nursing Schools; (ii) the Educational Records Evaluation Service; or (iii) the International Education Research Foundation. It is estimated that the completion of a credential evaluation from one of these credentialing agencies will cost between $200 - $300. However, each applicant is required to complete only one credential evaluation and each applicant is free to choose the credentialing agency he or she wishes to utilize. There will be no economic costs to any individual or Board regulated entity as a result of the eliminated language in proposed §217.2(a)(4)(B) and §217.4(a)(1)(B).

As required by the Government Code §2006.002(C), the Board has determined that the proposed amendments to §217.2 and §217.4 will not have an adverse economic effect on any individual or Board regulated entity because: (i) proposed amended §217.2(a)(4)(B) and §217.4(a)(1)(B) simply eliminate provisions that no longer yield their intended effect and do not impose any new requirements or costs with which small or micro businesses must comply; and (ii) no applicant subject to proposed amended §217.4(e) will meet the definition of a small business under the Government Code §2006.001(2). The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of these elements must be met in order for an entity to qualify as a small business under this section. Because an applicant under proposed amended §217.4(e) will always be an individual and not a legal entity formed for the purpose of making a profit, no applicant will qualify as a small business under the Government Code §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c), the Board is not required to prepare a regulatory flexibility analysis.

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.

To be considered, written comments will be accepted within 30 days of publication of this proposal in the *Texas Register* 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.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed pursuant to the authority of Texas Occupations Code §§301.157, 301.252, 301.259 and 301.151, which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §§301.157, 301.252, 301.259 and 301.151 are affected by the proposal.

§217.2. Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions.

(a) All applicants for initial licensure by examination shall:

(1) file a complete application containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable;

(2) submit verification of completion of all requirements for graduation from an approved nursing education program, or certification from the nursing program director of completion of certificate/degree requirements. Prerequisites of an accredited master's degree program leading to a first degree in professional nursing must be approved by the board;

(3) pass the NCLEX-PN (LVN applicant) or NCLEX-RN (RN applicant);

(4) Licensed vocational nurse applicants:

(A) must hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);

~~[(B) who have attended a professional nursing education program shall meet all of the requirements for licensure by examination as stated in this section, but may substitute completion of an acceptable level of a board-approved professional nursing education program as determined by the board;]~~

(B) [~~(C)~~] who have graduated from another U.S. jurisdiction's nursing education program must satisfactorily have completed curriculum comparable to the curriculum requirements for graduates of board-approved vocational nurse education programs. [~~;~~]

(5) submit FBI fingerprint cards provided by the Board for a complete criminal background check; and

(6) pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue determined by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable fees for determination of eligibility. Should the Board in its final determination find that the individual is not eligible for licensure, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility has been removed. In no event, may an applicant repetition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.

(c) An applicant for initial licensure by examination shall pass the NCLEX-PN or NCLEX-RN within four years of completion of requirements for graduation.

(d) An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years from the date of completion of requirements for graduation must complete a board approved nursing education program in order to take or retake the examination.

(e) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their license in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(f) The U.S. Army Practical Nurse Course (formerly the 91C Clinical Specialist Course) is the only military program acceptable for vocational nurse licensure by examination.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction.

(a) Nurse applicants for initial licensure applying under this section.

(1) A licensed vocational nurse applicant must:

(A) hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);

(B) have successfully completed an approved program for educating vocational/practical (second level general nurses) nurses [~~or curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs~~] by providing a Credential Evaluation Service Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF); and

(C) have achieved an approved score on an English proficiency test acceptable to the Board.

(2) A registered nurse applicant must provide a Credential Evaluation Service Full Education Course-by-Course Report from the Commission on Graduates of Foreign Nursing Schools (CGFNS), Educational Records Evaluation Service (ERES), or the International Education Research Foundation (IERF) and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant:

(A) has the educational credentials equivalent to graduation from a governmentally accredited/approved, post-secondary general nursing program of at least two academic years in length;

(B) received both theory and clinical education in each of the following: nursing care of the adult which includes both medical and surgical nursing, maternal/infant nursing, nursing care of children, and psychiatric/mental health nursing;

(C) received initial registration/license as a first-level, general nurse in the country where the applicant completed general nursing education;

(D) is currently registered/licensed as a first-level general nurse; and

(E) has achieved an approved score on an English proficiency test acceptable to the Board.

(3) all applicants must file a complete application for registration containing data required by the board attesting that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading, and the required application processing fee which is not refundable;

(4) all applicants must pass the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants) as a Texas applicant;

(A) within four years of completion of the requirements for graduation from the nursing education program if the applicant has not practiced as a second-level or first-level general nurse since completing the requirements for graduation; or

(B) within four years of the date of eligibility for the NCLEX-PN or NCLEX-RN if the applicant has practiced as a second-level or first-level general nurse at least two years since completing the requirements for graduation;

(5) all nurse applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check; and

(6) all nurse applicants must pass the jurisprudence exam approved by the board, effective September 1, 2008.

(b) An applicant who has completed the requirements for graduation and has practiced as a second-level or first-level general nurse for at least two years but has not practiced as a second-level or first-level general nurse within the four years immediately preceding the filing of an application for initial licensure will be issued a six month limited permit (temporary authorization) upon passing the NCLEX-PN or

NCLEX-RN examination and must complete a nurse refresher course that meets the criteria defined by the Board in order to be eligible for licensure under this section.

(c) An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete an appropriate nursing education program in order to be eligible to take or retake the examination.

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.

(e) Accustomation Permit.

(1) An applicant who has graduated from an accredited nursing program outside the United States may apply to the Board for a six month accustomation permit by completing an application and paying a fee. An applicant holding an accustomation permit under this subsection may participate in nursing education courses and clinical experiences.

(2) An applicant is eligible to apply for an accustomation permit under this subsection only if the applicant has:

(A) graduated from an accredited nursing program outside the United States;

(B) never taken the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants); and

(C) successfully completed a credential evaluation service from a board approved credentialing agency.

(3) An applicant holding an accustomation permit under this subsection may only participate in nursing education courses and clinical experiences under the direct supervision of a registered nurse who holds a current and unencumbered Texas license. For purposes of this subsection only, direct supervision requires a registered nurse to be working with the applicant at all times. At no time shall an applicant be left alone with a patient.

(f) [~~(e)~~] Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

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

Filed with the Office of the Secretary of State on February 9, 2009.

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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 305-6811

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CHAPTER 220. NURSE LICENSURE COMPACT

22 TAC §220.2, §220.3

The Texas Board of Nursing (Board) proposes amendments to §220.2 and §220.3, concerning the Nurse Licensure Compact (Compact). The Texas Occupations Code, Chapter 304 provides compact administrators with the authority to develop uniform rules to facilitate and coordinate implementation of the Compact. The proposed amendments to §220.2 and §220.3 are necessary in order to adopt certain policies of the member states of the Compact (party states). The adoption of these uniform rules will result in more consistent implementation of the Compact among the party states. Specifically, the proposed amendments to §220.2 are necessary for consistency and clarity among party states regarding the following issues: (i) documentation that may be requested in order to prove a nurse's primary state of residence; (ii) the option of a nurse on a visa to declare his or her country of origin or the party state as his or her primary state of residence; (iii) issuing a single state license to a nurse who declares a foreign country his or her primary state of residence; and (iv) designating when a license issued by one party state authorizes practice in all other party states and when a license issued by one party state does not authorize practice in other party states. It is important that these policies and procedures are adopted by the party states so that the treatment of compact license applications are consistent among the party states. Further, these proposed amendments are anticipated to result in a more efficient and streamlined compact application process in Texas. The proposed amendment to §220.3 is necessary to allow a nurse whose license has been revoked, suspended, or surrendered or whose application has been denied in the nurse's former state of primary residence to be eligible for issuance of a single state license in the nurse's new primary state of residence if the new primary state of residence deems it appropriate. However, the new primary state action will not provide a multistate privilege. This amendment is significant because a nurse may relocate to a new compact state and be unable to resolve the disciplinary past with the former state of residence. This amendment is anticipated to provide additional flexibility and opportunity to nurses under restricted licenses so that they may practice in a new state of primary residence, if that state of residence deems it appropriate, while resolving disciplinary actions with former states of residence.

The following is a section-by-section overview of the proposal.

Section 220.2. Issuance of a License by a Compact Party State. The proposed amendment to §220.2(b) provides that the following evidence may be requested in order to prove a nurse's primary state of residence: (i) Military Form Number 2058 - state of legal residence certificate; and (ii) W2 from US government of any bureau, division, or agency thereof indicating the declared state of residence. The proposed amendment to §220.2(c) provides that a nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. Further, the

proposed amendment to §220.2(c) provides that, if the foreign country is declared the primary state of residence, a single state license will be issued by the party state. The proposed amendment to §220.2(d) provides that a license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. The proposed amendment to §220.2(e) states that when a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. The remaining amendments to §220.2 re-designate the remaining subsections accordingly. The proposed amendment to §220.3(b) provides that an individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Further, the proposed amendment to §220.3(b) provides that, once eligible for licensure in the prior state(s), a multistate license may be issued. The remaining amendments to §220.3 re-designate the subsections accordingly.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, there will be no additional fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits will be more consistent implementation of the Compact among the party states, a more efficient and streamlined compact application process in Texas, and additional flexibility and opportunity for nurses under restricted licenses. There will be no economic costs to any individual or Board regulated entity as a result of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Board has determined that proposed amended §220.2 and §220.3 will not have an adverse economic effect on any individual, Board regulated entity, or other entity because no entity subject to proposed amended §220.2 and §220.3 will meet the definition of a small business under the Government Code §2006.001(2). The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of these elements must be met in order for an entity to qualify as a small business under this section. Because a nurse subject to proposed amended §220.2 or §220.3 will always be an individual and not a legal entity formed for the purpose of making a profit, no nurse will qualify as a small business under the Government Code §2006.001(2). Additionally, because no party state issuing a license under the Compact is formed for the purpose of a making a profit or is independently owned or operated, no party state will qualify as a small business under the Government Code §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c), the Board is not required to prepare a regulatory flexibility analysis.

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.

To be considered, written comments will be accepted within 30 days of publication of this proposal in the *Texas Register* 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.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed pursuant to the authority of Texas Occupations Code, Chapter 304, which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code, Chapter 304 is affected by the proposal.

§220.2. Issuance of a License by a Compact Party State.

(a) As of July 1, 2005, no applicant for initial licensure will be issued a license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examinations used for licensure.

(b) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but are not limited to:

(1) a driver's license with a home address;

(2) voter registration card displaying a home address; [~~or~~]

(3) federal income tax return declaring the primary state of residence; [~~.~~]

(4) Military Form No. 2058 - state of legal residence certificate; or

(5) W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

(c) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(d) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(e) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(f) [~~(c)~~] A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty days.

(g) [~~(d)~~] The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty day period stated in subsection (f) [~~(e)~~] of this section shall be stayed until resolution of the pending investigation.

(h) [~~(e)~~] The former home state license shall no longer be valid upon the issuance of a new home state license.

(i) [~~(f)~~] If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten business days and the former home state may take action in accordance with that state's laws and rules.

§220.3. Limitations on Multistate Licensure Privilege--Discipline.

(a) All home state Board disciplinary orders, agreed or otherwise, which limit the scope of licensee's practice or require monitoring of the licensee as a condition of the order shall include the requirement that the licensee will limit his or her practice to the home state during the pendency of the order. This requirement may allow the licensee to practice in other party states with prior written authorization from both the home state and party state Boards.

(b) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

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

Filed with the Office of the Secretary of State on February 9, 2009.

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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 305-6811

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CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The proposed amendments to §223.1(a)(8) are necessary to implement a new $25 fee for the issuance of accustomation permits. The Board is simultaneously proposing amendments to §217.4 (relating to Requirements For Initial Licensure By Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States Jurisdictions) that permit certain nurses who have graduated from accredited nursing programs outside the United States to apply to the Board for a six-month accustomation permit. This six-month accustomation permit will authorize a qualifying nurse to participate in nursing education courses and clinical experiences in Texas. Further, the proposed amendments to §217.4 require an applicant to submit an accompanying fee to the Board with each accustomation permit application. These proposed amendments are also published in this edition of the *Texas Register.* The proposed new $25 fee in §223.1(a)(8) is reasonable and necessary to cover the costs of processing these accustomation permit applications. The proposed amendments to §223.1(a)(8) are also necessary to clarify that the existing fees for the issuance of a temporary permit for completing a refresher course and for the issuance of a temporary permit under §301.258 are also $25.

The following is a section-by-section overview of the proposal.

The proposed amendment to §223.1(a)(8) provides that the issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit is $25.

Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment is in effect, there may be an approximate $2,500 total annual increase in revenue to state government as a result of the enforcement and administration of this proposal. This estimate is based on the following factors. The proposed amendments to §223.1(a)(8) impose a new $25 application filing fee on each applicant applying for an accustomation permit. The Board anticipates that it will receive 100 new applications for accustomation permits annually, resulting in an approximate $2,500 total annual increase in revenue to state government.

Ms. Thomas also has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefits will be the opportunity for qualifying nurses who have graduated from an accredited nursing program outside the United States to participate in nursing education courses and clinical experiences prior to taking an NCLEX exam. It is anticipated that the participation in these educational courses and clinical experiences will assist qualifying nurses with the transition into the United States healthcare system and will increase the passage rate of the NCLEX exam, ultimately resulting in additional qualified and trained nurses.

Proposed amended §223.1(a)(8) prescribes a fee for applicants applying for an accustomation permit. No person is required by law to apply for an accustomation permit. However, for those qualifying individuals who seek to participate in nursing education courses and clinical experiences prior to taking an NCLEX exam and who choose to apply for an accustomation permit, there will be a $25 fee imposed on each applicant submitting an accustomation application to the Board.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Board has determined that proposed amended §223.1(a)(8) will not have an adverse economic effect on any individual applicant because no applicant will meet the definition of a small business under the Government Code §2006.001(2). The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of these elements must be met in order for an entity to qualify as a small business under this section. Because an applicant who applies for an accustomation permit under proposed amended §217.4(e) and pays the accompanying fee of $25 under proposed amended §223.1(a)(8) will always be an individual and not a legal entity formed for the purpose of making a profit, no applicant will qualify as a small business under the Government Code §2006.001(2). Therefore, in accordance with the Government Code §2006.002(c), the Board is not required to prepare a regulatory flexibility analysis.

The Board has determined that no private real property interests are affected by this proposal and that this proposal does not re-

strict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments will be accepted within 30 days of publication of this proposal in the *Texas Register* 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.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.155 and §301.151, which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code, §301.155 and §301.151, are affected by this proposal.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

(8) issuance of a temporary permit for completing a refresher course, a temporary permit under §301.258, or an accustomation permit: $25;

(9) - (24) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on February 9, 2009.

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James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 305-6811

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.4, 871.7 - 871.9, 871.14

The Advisory Board of Athletic Trainers (board) proposes amendments to §§871.4, 871.7, 871.8, 871.9, and 871.14 concerning the licensure and regulation of athletic trainers.

BACKGROUND AND PURPOSE

The amendments are being proposed in response to complaints and to application denials by clarifying and streamlining licensure requirements and procedures for persons who apply to become licensed athletic trainers in Texas. The proposed addition of a jurisprudence examination is designed to address and/or reduce complaints before the board and to insure the proper practice of licensed athletic trainers.

Proposed amendments remove the references to the board's mailing address; establish the requirement of a jurisprudence examination; restrict the setting at which a student athletic trainer shall accumulate apprenticeship hours; eliminate the requirement of an applicant to take the written and oral exams if the applicant has failed either portion three times; and set a time limit in which an applicant must apply for examination after the applicant's degree has been conferred.

SECTION-BY-SECTION SUMMARY

The amendment to §871.4 removes the reference to the board's mailing address, which has changed.

The amendment to §871.7 establishes the requirement that applicants for a license must complete a jurisprudence examination.

The amendment to §871.8 establishes the requirement that a student athletic trainer who has graduated cannot accumulate apprenticeship hours at the same setting where the student athletic trainer is employed.

Amendments to §871.9 remove the requirement of an applicant to take the written and oral exams if the applicant has failed either portion three times, and set a time limit in which an applicant must apply for examination after the applicant's degree has been conferred.

The amendment to §871.14 removes the reference to the board's mailing address, which has changed.

FISCAL NOTE

Stewart Myrick, Program Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Myrick has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Myrick has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of athletic trainers.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225.

"Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Stewart Myrick, Program Director, Advisory Board of Athletic Trainers, MC-1982, P.O. Box 149347, Austin, Texas 78714-9347, or by email to at@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

The amendments affect Occupations Code, Chapter 451.

§871.4. Petition for Rulemaking.

(a) (No change.)

(b) Submission of the petition.

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

(4) The petition shall be mailed or delivered to the board office [~~Executive Secretary, Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183~~].

(5) - (6) (No change.)

(c) (No change.)

§871.7. Qualifications.

(a) - (i) (No change.)

(j) Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§871.8. Student Athletic Trainer Activities.

A student athletic trainer may perform the activities of an athletic trainer only under the following circumstances.

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

(4) A student athletic trainer who has graduated shall not accumulate apprenticeship hours at the same college, university, high school, professional athletic team, or health care clinic at which the student athletic trainer is employed. In cases where a student athletic trainer is employed by a school, the student athletic trainer shall not accumulate apprenticeship hours at a setting within the same school.

§871.9. Examination for Licensure.

(a) - (h) (No change.)

(i) The following procedures relate to applicants who fail the examination prescribed by the board.

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

[~~(3) An applicant who fails an examination three times must take both the written examination and the practical examination on the fourth examination attempt and on every fourth examination attempt thereafter.~~]

(j) - (k) (No change.)

(l) A first-time applicant must apply for examination within five years from the date on which the applicant's qualifying degree was conferred or the apprenticeship was completed, whichever is later. An applicant may submit an application after this time period upon successful completion of remedial coursework or apprenticeship, as approved by the board.

§871.14. Violations, Complaints and Disciplinary Actions.

(a) (No change.)

(b) A person wishing to file a complaint against a licensee or other person shall notify the department in writing. [~~The initial notification of a complaint may be in writing, by telephone, or by personal visit to the program director's office. The mailing address is Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183 and the phone number is (512) 834-6615.~~]

(c) - (h) (No change.)

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

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900451
David Weir
Chair
Advisory Board of Athletic Trainers
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

The Texas Parks and Wildlife Department (the department) proposes amendments to §§53.10, 53.14 - 53.17, and 53.30 and repeal of §53.18, concerning Fees. The amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §53.10, concerning Public Hunting and Fishing Permits and Fees, would add new §53.10(a)(5) to relocate the fee for the mentored hunting permit from current

§53.17(c). The amendment is necessary in order to ensure that all fees affecting public hunting permits are located in the same section.

The proposed amendment to §53.14, concerning Deer Management and Removal Permits, would eliminate subsection (b) because the Trap, Transport, and Transplant permit is not restricted to deer. The contents of subsection (b) are being relocated to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The proposed amendment also updates terminology to reflect legislative changes. House Bill 1308, enacted by the 80th Texas Legislature, amended Parks and Wildlife Code, Chapter 43, Subchapter L, to change the term "scientific breeder" to "deer breeder."

The proposed amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits, would add a new subsection (a) to contain the fees associated with the Trap, Transport, and Transplant Permit, which is being relocated from §53.14, concerning Deer Management and Removal Permits. The amendment is necessary because the Trap, Transport, and Transplant permit is not restricted to deer.

The proposed amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees, would incorporate the contents of current §53.18, which is being proposed for repeal. The proposed amendment also would eliminate current §53.16(d)(1) which has expired on its own terms and is no longer necessary.

The proposed amendment to §53.17, concerning Miscellaneous Fees, would remove current subsection (c), which is being relocated to §53.10, concerning Public Hunting and Fishing Permits and Fees. The proposed amendment is necessary to locate all fees for public hunting permits in a single section.

The proposed amendment to §53.30, concerning Facility Admissions and Fees, would nonsubstantively redesignate the fees listed in paragraph (1) in order to make the structure of the rule consistent with other rules.

The proposed repeal of §53.18, concerning Other Fees, is necessary because the contents of §53.18 are proposed for relocation to §53.16, concerning Vessel, Motor, and Marine Licensing Fees.

Ms. Julie Horsley, Director of Policy and Analysis, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Horsley also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clearer, more accurate, and more intuitively organized rules prescribing fee amounts.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006, for those proposed rules.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Julie Horsley, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4913, e-mail: julie.horsley@tpwd.state.tx.us.

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.10, 53.14 - 53.17

The amendments are proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, to set and charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card, and to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department; §31.0412, which authorizes the commission to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events and to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and record-keeping requirements; §43.061, which authorizes the commission to establish fees for review of applications for permits to trap, transport, and transplant game animals and game birds and any other department actions necessary to implement §43.061; and §81.403, which authorizes the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or wildlife management areas and requires the department to charge a permit fee by rule.

The proposed amendments affect Parks and Wildlife Code, Chapters 11, 31, 43, and 81.

§53.10. Public Hunting and Fishing Permits and Fees.

(a) Hunting and access permits:

(1) annual public hunting--$48;

(2) replacement annual public hunting--$10;

(3) limited public use--$12; [~~and~~]

(4) replacement limited public use--$10; and

(5) mentored hunting permit--$25.

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

§53.14. Deer Management and Removal Permits.

(a) Deer breeding and related permits. Deer [~~Scientific~~] breeder's and deer [~~scientific~~] breeder's renewal--$400.

[~~(b) Trap, transport and transplant permit application fees:~~]

[(1) nonrefundable application processing fee--$750 per release site; and]

[(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.]

(b) [(c)] Urban white-tailed deer removal permit:

(1) nonrefundable application processing fee--$750; and

(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(c) [(d)] Deer management permit and renewal--$1,000.

(d) [(e)] Antlerless and spike buck deer control permit application processing fee--$360.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

(a) Trap, transport and transplant permit application fees:

(1) nonrefundable application processing fee--$750 per release site; and

(2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(b) [(a)] Game bird and animal breeding licenses:

(1) game animal breeder's--$75;

(2) class 1 commercial game bird breeder's--$180; and

(3) class 2 commercial game bird breeder's--$25.

(c) [(b)] Commercial nongame permits:

(1) resident nongame permit--$18;

(2) nonresident nongame permit--$60;

(3) resident nongame dealer permit--$60;

(4) nonresident nongame dealer permit--$240;

(5) nongame species sales permit--$200; and

(6) nongame species sales permit renewal--$200.

(d) [(c)] Zoological collection permit application--$150;

(e) [(d)] Scientific research permit application--$50;

(f) [(e)] Educational display permit application--$50.

(g) [(f)] Exotic Species (fish, shellfish and aquatic plants):

(1) exotic species permit fee for new, renewed or amended application requiring facility inspection--$250;

(2) exotic species permit fee for renewed or amended application not requiring facility inspection--$25;

(3) exotic species permit fee for renewal application received more than one year after renewal date--$250.

(4) triploid grass carp permit application fee--$15, plus $2 per triploid grass carp requested;

(5) exotic species interstate transport permit application fee--individual--$25;

(6) exotic species interstate transport permit application fee--annual--$100.

(h) [(g)] Miscellaneous fees:

(1) commercial plant permit--$50;

(2) aerial management permit--$200;

(3) broodfish permit application--$25;

(4) permit to introduce fish, shellfish, or aquatic plants-no fee;

(5) offshore aquaculture permit or renewal--$1,500;

(6) oyster lease application--$200;

(7) oyster lease rental--$6 per acre of location per year;

(8) oyster lease renewal/transfer/sale--$200; and

(9) double-crested cormorant control permit--$12.

§53.16. Vessel, Motor, and Marine Licensing Fees.

(a) Registration fees. After the initial registration of a vessel, the vessel may be registered electronically by credit card by agreeing to pay an applicable credit card handling or convenience fee in addition to the normal registration fee.[:]

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

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

(d) Marine dealer/distributor/manufacturer fees:

[(1) marine dealer manufacturer number (effective until February 29, 2004)--$130;]

(1) [(2)] marine dealer, distributor or manufacturer license (includes licensee validation card (with decal) for recreational purposes or participation in contests or events)--$500;

(2) [(3)] marine dealer, distributor or manufacturer ownership transfer of license--$500;

(3) [(4)] marine dealer, distributor or manufacturer location transfer--$10;

(4) [(5)] marine dealer, distributor or manufacturer information update/license correction--$3;

(5) additional marine dealer, manufacturer, or distributor's licensee validation card (with decal) for recreational purposes or participation in contests or events--$120; and

(6) replacement card marine dealer, manufacturer, or distributor's licensee validation card (with decal)--$10.

(e) - (f) (No change.)

§53.17. Miscellaneous Fees.

(a) Off-highway vehicle decal--$8;

(b) Controlled exotic snake permits:

(1) recreational--$20; and

(2) commercial--$60.[; and]

[(c) mentored hunting permit--$25.]

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900472
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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31 TAC §53.18

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, and to set and charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card; and under Parks and Wildlife Code, §31.0412, which authorizes the commission to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events and to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

The proposed repeal affects Parks and Wildlife Code, Chapters 11 and 31.

§53.18. Other Fees.

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

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DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The amendment is proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendments affect Parks and Wildlife Code, Chapter 11.

§53.30. Facility Admission and Use Fees.

As determined and authorized by the executive director, the department may charge entrance and facility use fees within the ranges established or the amounts specified in this section.

(1) Texas Freshwater Fisheries Center.

(A) Entry fees.

(i) daily entrance fee--$0-$6; and

(ii) annual pass--$0-$15.

~~[(A) The department may charge entrance fees, not to exceed $6 for daily entrance, and $15 for an annual pass.]~~

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

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

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

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DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.13

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.13, concerning Business License and Permits (Fishing).

The proposed amendment would implement fees for a new subcategory of fishing guide license, the resident and nonresident paddle craft all-water fishing guide licenses. In another rulemaking published elsewhere in this issue of the *Texas Register*, the department proposes an amendment to §65.73, concerning Fishing Guide License--Required Documentation, which would establish a distinction in requirements between fishing guides operating a motorized vessel and fishing guides operating from a non-motorized boat. The information contained in the preamble of that rulemaking is reproduced here as a courtesy.

Under current rule, all-water fishing guide licensing requirements are unsuited for prospective guides who fish exclusively from paddle craft, in that guides are required to possess a valid and appropriate U.S. Coast Guard Operator's License (which requires completion of a CPR/First-aid course and proof of time on the water as conditions of licensure). For operators of paddle craft, many of whom do not have access to a power boat, this can present a barrier to engaging in the business of being a fishing guide. The creation of subcategories of the existing licenses, with different sets of requirements for operators of power craft and operators of paddle craft, would create the opportunity for operators of paddle craft to obtain a guide license. The fee for the new licenses is identical to the fee currently in effect for all-water fishing guide licenses. Additionally, it should be noted that a guide who has the all-water guide license under

the current requirements will still be allowed to operate as a guide in either a motorized or a non-motorized craft.

Paul Hammerschmidt, Program Specialist, has determined that for each of the first five years that the rule as proposed is in effect, there could be fiscal implications for state government as a result of administering or enforcing the rule. The effect of the creation of the new licenses is to create subcategories out of the current single category of persons who are required to purchase a fishing guide license if they wish to engage in the business of being a fishing guide. However, there may be persons who have until now chosen not to engage in the business of being a fishing guide because they are unwilling or unable to obtain the required U.S. Coast Guard Operator's License. The department cannot determine how many currently unlicensed persons might purchase a paddle craft all-water fishing guide license; however, it is expected to be fewer than ten but could be more. Therefore, assuming that ten nonresident licenses are purchased each year, the maximum fiscal impact to the department would be an increase of $10,000 in revenue per year. Any combination of resident and nonresident licenses totaling ten will result in less than $10,000 of revenue per year.

There will be no fiscal implications for other units of state or local government as a result of the proposed rule.

Mr. Hammerschmidt also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the establishment of a license that allows fishing guides who do not use power craft to be licensed as fishing guides.

There will be no additional economic costs for persons required to comply with the rule as proposed. Under Parks and Wildlife Code, Chapter 47, no person may engage in business as a fishing guide unless the resident has obtained a fishing guide license; thus, the proposed amendment does require anyone to obtain a license who is not currently required to obtain a license.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department believes that most if not all persons doing business as a paddle-craft fishing guide qualify as small or micro-businesses. The department estimates that ten or fewer small or micro-businesses would be affected by the proposed rule. However, the department has determined that the rule as proposed will likely result in positive economic impacts to small businesses and micro-businesses. Businesses that currently operate under the all-water fishing guide license will not be required to obtain the new paddle craft all-water fishing guide license and thus will not be impacted by the proposed rule. However, a person or business who currently has an all-water fishing guide license, but wishes to provide fishing guide services only by paddle craft will no longer be required to obtain a United States Coast Guard (USCG) Operator of an Uninspected Passenger Vessel (OUPV) license.

The USCG OUPV currently costs $1,110. The current fee for the resident all-water fishing guide license is $200. Therefore, the cost of obtaining the resident all-water fishing guide license totals $1,310.

To obtain a paddle craft all-water fishing guide license under the proposed rule, a Texas resident would be required to pay approximately $745, which consists of the $200 fee for licensure (proposed elsewhere in this issue), approximately $45 for CPR/First Aid certification, and approximately $500 for the required kayak/canoe certifications. However, the $1,100 USCG OUPV would not be required. Therefore, the cost savings for a resident providing paddle craft fishing guide services would be approximately $565 per year.

For nonresidents, the current fee for the all-water fishing guide license is $1,000. When combined with the cost of the USCG OUPV, the cost of obtaining the resident all-water fishing guide license totals $2,100. For nonresidents wishing to guide by paddle craft only, the probable direct economic cost of compliance would be approximately $1,545, which consists of the $1,000 fee for licensure (proposed elsewhere in this issue), approximately $45 for CPR/First Aid certification, and approximately $500 for the required kayak/canoe certifications. However, the $1,110 USCG OUPV would not be required. Therefore, the cost savings for a nonresident providing paddle craft fishing guide services would be approximately $555 per year. As a result, the rule as proposed will not have an adverse impact on small or micro-businesses doing business as fishing guides.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 (e-mail: paul.hammerschmidt@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §47.004 and §47.005, which authorize the commission to adopt rules governing the issuance and use of a resident and nonresident fishing guide licenses, respectively, including rules creating separate resident fishing guide licenses for use in saltwater and freshwater.

The proposed amendment affects Parks and Wildlife Code, Chapter 47.

§53.13. Business License and Permits (Fishing).

(a) Licenses.

(1) - (10) (No change.)

(11) resident all-water fishing guide--$200; [~~and~~]

(12) resident paddle craft all-water fishing guide--$200;

(13) [~~(12)~~] non-resident all-water fishing guide--$1,000; and

(14) non-resident paddle craft all-water fishing guide--$1,000.

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

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department (the department) proposes amendments to §§57.111, 57.112, 57.156, 57.157, 57.252, 57.258, 57.377, 57.378, and 57.397, concerning Fisheries.

The proposed amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §57.111, concerning, Definitions, would update the scientific names of various families, genera, and species listed in the section. Scientific names are frequently changed as new knowledge about organisms is developed. Each change to a name in the section reflects the official name recognized by the American Fisheries Society, which is the acknowledged arbiter of taxonomic nomenclature with respect to aquatic organisms. The proposed amendment is nonsubstantive and neither removes organisms from nor adds organisms to the list of organisms regulated by the department.

The proposed amendment to §57.112, concerning General Rules, would alter subsections (b) and (c) to replace the term "public waters" with the term "water of this state." The proposed amendment is necessary to be consistent with Parks and Wildlife Code, §66.007(a), which states that "No person may import, possess, sell, or place into water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants except as authorized by rule or permit issued by the department."

The proposed amendment to §57.156, concerning, Definitions, would correct an inaccurate reference in paragraph (2) to the title of a publication concerning bivalve mollusks. The change is necessary for accuracy and is nonsubstantive.

The proposed amendment to §57.157, concerning, Mussels and Clams, would correct a misspelling of a species name in subsection (b). The change is necessary for accuracy and is nonsubstantive.

The proposed amendments to §57.252 and §57.258, concerning Introduction of Fish, Shellfish, and Aquatic Plants, would alter §57.252(f)(5) and §57.258(5) to extend from 10 days to 60 days the time period in which a permittee must remove enclosures and associated infrastructure from public waters as a result of permit expiration or revocation. This change was presented to the Texas Parks and Wildlife Commission in its March 2008 and May 2008 meetings, but was inadvertently excluded from the rulemaking. These changes are necessary to maintain consistent rules that reflect the decisions of the commission. Under the current rule, if it became necessary to remove infrastructure related to an off-shore aquaculture facility, such as in the case of an aquaculture company closing its business or losing its permit, the company would be required to remove the off shore aquaculture infrastructure within ten days. After talking to individuals and entities impacted by this rule, the department has determined that 10 days is not sufficient time to remove such infrastructure. There are several factors that may impact the removal of aquaculture infrastructure, including contracting and coordination obligations, as well as weather. Sixty days was determined to be a reasonable period for removal of the infrastructure.

The proposed amendment to §57.377, concerning Definitions, would remove the list of game fish and replace it with a reference to the definition of game fish contained in §65.3 of this title (relating to Definitions). The change is necessary to reduce duplication and remove the need to make changes in several rules each time a species is designated as a game fish and is nonsubstantive.

The proposed amendment to §57.378, concerning Nongame Fishes Covered by These Rules, would rename the section, correct misspellings of species names, and update taxonomic references. The change is necessary to maintain accurate rules and is nonsubstantive.

The proposed amendment to §57.397, concerning Broodfish Permit; Revocation, would alter the section to indicate that revocation of a permit is done by the department rather than by the executive director. The change is necessary to maintain accuracy and is nonsubstantive.

Mr. Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be accurate regulations.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The only potential small businesses impacted by the proposed rule would be small businesses in the aquaculture industry that are required to remove aquaculture facilities under proposed amendments to §57.252 and §57.258. However, any such impact would be a positive impact, rather than an adverse impact in that current regulatory requirements are being relaxed. Therefore, the department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change

market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775, e-mail: robert.macdonald@tpwd.state.tx.us.

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.111, §57.112

The amendments are proposed under Parks and Wildlife Code, §66.007, which requires the department to department to make rules governing the importation, possession, and sale of exotic harmful or potentially harmful fish, shellfish, or aquatic plants and their placement into water of this state.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.111. Definitions.

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

(1) - (15) (No change.)

(16) Harmful or potentially harmful exotic fish--

(A) Lampreys Family: Petromyzontidae--all species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays Family: Potamotrygonidae--all species;

(C) Arapaima Family: Arapaimadae [~~Osteoglossidae~~]--Arapaima gigas;

(D) South American Pike Characoids Family: Acestrorhynchidae [~~Characidae~~]--all species of genus Acestrorhyncus;

(E) African Tiger Fishes Family, Family Alestidae [~~Subfamily~~ ~~Alestiidae:~~ ~~Hydrocyninae~~]--all species of genus Hydrocynus;

(F) Piranhas and Pirambebas: Family Characidae [~~Serrasalmideae, Subfamily:~~ ~~Serrasalminae~~]--all species [~~except pacus~~] of the genus Piractus;

(G) Payara and other wolf or vampire tetras: Dogtooth characins, Family Cynodontidae [~~Family Characidae, Subfamily:~~ ~~Rhaphiodontinae~~]--all species of genera Hydrolycus, [~~and~~] Rhaphiodon, and [~~including~~] Cynodon;

(H) Dourados: Family Characidae, Subfamily: Incertae [~~Bryconinae~~]--all species of genus Salminus;

(I) South American Tiger Fishes Family: Erythrinidae--all species;

(J) South American Pike Characoids Family: Ctenoluciidae [~~Ctenolucidae~~]--all species of genera Ctenolucius and Boulengerella[~~, including Luciocharax and Hydrocinus~~];

(K) African Pike Characoids Families: Hepsetidae, [~~and~~] Ichthyboridae, and Citharinidae--all species;

(L) Electric Eels Family: Gymnotidae [~~Electrophoridae~~]--Electrophorus electricus;

(M) Carps and Minnows Family: Cyprinidae--all species and hybrids of species of genera: Aspius, Pseudaspius [~~Pseudoaspius~~], Aspiolucius (Asps); Abramis, Blicca, Megalobrama, Parabramis (Old World Breams); Hypophthalmichthys or Aristichthys (Bighead Carp); Mylopharyngodon (Black Carp); Ctenopharyngodon (Grass Carp); Cirrhinus (Mud Carp); Thynnichthys (Sandkhol Carp); Hypophthalmichthys (Silver Carp); Catla (Catla); Leuciscus (Old World Chubs, Ide, Orfe, Daces); Tor, Neolissochilus hexagonolepsis [~~including the species Barbus hexiglonolepsis~~] (Giant Barbs and Mahseers); Rutilus (Roaches); Scardinius (Rudds); Elopichthys (Yellowcheek); Catlocarpio (Giant Siamese Carp); all species of the genus Labeo (Labeos) except Labeo chrysophekadion (Black SharkMinnow);

(N) Walking Catfishes Family: Clariidae--all species;

(O) Electric Catfishes Family: Malapteruridae--all species;

(P) South American Parasitic Candiru Catfishes Family: Trichomycteridae [~~Subfamilies:~~ ~~Stegophilinae and Vandelliinae--all species~~];

(Q) Pike Killifish Family: Poeciliidae--Belonesox belizanus;

(R) Marine Stonefishes Family: Synanceiidae--all species;

(S) Tilapia Family: Cichlidae--all species of genera Tilapia, Oreochromis, and Sarotherodon [~~Saratherodon~~];

(T) Asian Pikeheads Family: Luciocephalidae--all species;

(U) Snakeheads Family: Channidae--all species;

(V) Old World Pike-Perches Family: Percidae--all species of the genus Sander except Sander vitreum;

(W) Nile Perch Family: Family Latidae [~~Centropomidae (also called Latidae)~~]--all species of genera Lates and Luciolates;

(X) Seatrouts and Corvinas Family: Sciaenidae--all species of genus Cynoscion except Cynoscion nebulosus, C. nothus, and C. arenarius;

(Y) Whale Catfishes Family: Cetopsidae--all species;

(Z) Ruffe Family: Percidae--all species of genus Gymnocephalus;

(AA) Air sac Catfishes Family: Heteropneustidae--all species;

(BB) Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae--all species;

(CC) Freshwater Eels Family Anguillidae [~~family:~~ ~~Anguilliidae~~]--all species except Anguilla rostrata;

(DD) Round Gobies Family: Gobiidae--all species of genus Neogobius[, ~~including N. melanostoma~~].

(EE) Temperate Basses Family: Moronidae--all species except for Morone saxatilis, M. chrysops and M. mississippiensis and hybrids between these three species;

(FF) Temperate Perches Family: Percichthyidae--all species[, ~~including species of the genus Siniperca (Chinese perches)~~].

(17) Harmful or potentially harmful exotic shellfish--

(A) Crayfishes Family: Parastacidae--all species;

(B) Mittencrabs Family: Varnidae [~~Grapsidae~~]--all species of genus Eriocheir;

(C) Zebra Mussels Family: Dreissenidae--all species of genus Dreissena;

(D) Penaeid Shrimp Family: Penaeidae--all species of genera Penaeus, Litopenaeus, Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus (all previously considered Penaeus) except L. setiferus, F. [~~Far.~~] aztecus and Far. duorarum.

(E) Oyster Family: Ostreidae--all species except Crassostrea virginica and Ostrea equestris.

(F) Applesnails and Giant Rams-Horn Snail[: ~~all genera and species of the~~] Family Ampullariidae [~~(previously called Pilidae), including Pomacea~~] and Marisa, except spiketop applesnail (Pomacea bridgesi [~~bridgesii~~]).

(18) Harmful or potentially harmful exotic plants--

(A) Giant or Dotted Duckweed Family: Lemnaceae--Landoltia [~~Landolita~~] punctata;

(B) Salvinia Family: Salviniaceae--all species of genus Salvinia;

(C) Waterhyacinth Family: Pontederiaceae--Eichhornia crassipes (floating waterhyacinth) and E. azurea (rooted waterhyacinth);

(D) Waterlettuce Family: Araceae--Pistia stratiotes;

(E) Hydrilla Family: Hydrocharitaceae--Hydrilla verticillata;

(F) Lagarosiphon Family: Hydrocharitaceae--Lagarosiphon major;

(G) Eurasian Watermilfoil Family: Haloragaceae--Myriophyllum spicatum;

(H) Alligatorweed Family: Amaranthaceae--Alternanthera philoxeroides;

(I) Paperbark Family: Myrtaceae--Melaleuca quinquenervia;

(J) Torpedograss Family: Poaceae [~~Gramineae~~]--Panicum repens;

(K) Water spinach (also called ong choy, rau mong and kangkong) Family: Convolvulaceae--Ipomoea aquatica.

(L) Ambulia (Asian marshweed) Family: Scrophulariaceae--Limnophila sessiliflora [~~sessiflora~~];

(M) Narrowleaf False Pickerelweed Family: Pontederiaceae--Monochoria hastata;

(N) Heartshaped False Pickerelweed Family: Pontederiaceae--Monochoria vaginalis;

(O) Duck-lettuce Family: Hydrocharitaceae--Ottelia alismoides;

(P) Wetland Nightshade Family: Solanaceae--Solanum tampicense;

(Q) Exotic Bur-reed Family: Sparganiaceae--Sparganium erectum;

(R) Brazilian Peppertree Family: Anacardiaceae--Schinus terebinthifolius;

(S) Purple Loosestrife Family: Lythraceae--Lythrum salicaria.

(19) - (36) (No change.)

§57.112. General Rules.

(a) Scientific reclassification or change in nomenclature of taxa at any level in taxonomic hierarchy will not, in and of itself, result in redefinition of a harmful or potentially harmful exotic species.

(b) Except as provided in §57.113 of this title (relating to Exceptions), it is an offense for any person to release into the water of this state [~~public waters~~], import, sell, purchase, transport, propagate, or possess any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant.

(c) Except as specifically authorized in writing by the department, it is an offense for anyone to remove a live grass carp from the water of this state [~~public waters~~] where grass carp have been introduced under a permit issued by the department.

(d) Violation of any provision of a permit issued under these rules is a violation of these rules.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.156, §57.157

The amendments are proposed under Parks and Wildlife Code, §78.006, which authorizes the commission to regulate the taking, possession, purchase, and sale of mussels and clams.

The proposed amendments affect Parks and Wildlife Code, Chapter 78.

§57.156. Definitions.

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

(1) (No change.)

(2) Freshwater mussel--Bivalve mollusks of the family Unionidae (collectively including Amblimidae and Margaritiferidae)

as listed by the American Fisheries Society Special Publication 29 [16].

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

§57.157. Mussels and Clams.

(a) (No change.)

(b) Size limits. No person may take or possess mussels or clams, including their shells, that can be passed through a ring with an inside diameter (I.D.) specified for the species, as follows:
Figure: 31 TAC §57.157(b)

(c) - (g) (No change.)

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

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SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.252, §57.258

The amendments are proposed under Parks and Wildlife Code, §66.015, which requires the commission to establish rules and regulations governing permits to introduce fish, shellfish, or aquatic plants into the public water of this state.

The proposed amendments affect Parks and Wildlife Code, Chapter 66.

§57.252. General Provisions.

(a) - (e) (No change.)

(f) A holder of an offshore aquaculture permit must:

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

(5) remove all enclosures and associated infrastructure from public waters within (60) [10] calendar days of permit expiration or revocation.

(g) - (h) (No change.)

§57.258. Prohibited Acts.

Except as provided in this subchapter, it is an offense if:

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

(5) any person to whom the department has issued an offshore aquaculture permit fails to remove all enclosures and associated infrastructure from public waters within 60 [10] calendar days of permit expiration or revocation; or

(6) (No change.)

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

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SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.377, §57.378

The amendments are proposed under Parks and Wildlife Code, §67.004, which requires the commission to establish by rule any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§57.377. Definitions.

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

(1) (No change.)

(2) Game fish--As defined in §65.3(23) of this title (relating to Definitions) [Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph].

(3) Non-game fish--All species not defined [listed] as game fish, except endangered and threatened fish, which are defined and regulated under Chapter 65, Subchapter G of this title (relating to Threatened and Endangered Nongame Species) [separate proclamations].

(4) (No change.)

§57.378. Applicability: Nongame Fishes [Covered by These Rules].

A permit to sell the following species of nongame fish taken from public fresh water may be issued if the department determines that the sale is necessary to properly manage the species.
Figure: 31 TAC §57.378

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

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SUBCHAPTER F. COLLECTION OF BROODFISH FROM TEXAS WATERS

31 TAC §57.397

The amendment is proposed under Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for issuance of a permit for the take of broodfish from public waters.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§57.397. Broodfish Permit; Revocation.

The department [~~director~~] may revoke a broodfish permit upon finding that a permittee or his agent:

(1) does not hold a valid aquaculture (fish farming) license issued by the Texas Department of Agriculture;

(2) does not hold a valid sportfishing license while collecting in all public waters of this state in addition to a saltwater stamp in public salt water;

(3) has violated any provision of that broodfish permit;

(4) fails to report, as required in §57.401 of this title (relating to Reports), the number and sizes of broodfish collected;

(5) provides false information in a broodfish report; or

(6) fails to remit to the department within 30 days of broodfish collection all restitution fees assessed to the permittee for recovery of the value of broodfish collected.

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

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CHAPTER 59. PARKS

The Texas Parks and Wildlife Department proposes the repeal of §59.75 and §59.134, amendments to §§59.41 - 59.47, 59.61 - 59.64, and 59.131 - 59.133, and new §59.134, concerning State Parks. The repeals, amendments, and new section are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The proposed repeal of §59.75, concerning Coastal Management Program, is necessary because it is duplicative of other department rules. The department is already required by the Coastal Coordination Act and other department regulations, as well as General Land Office regulations to perform the activities listed in the rule. Texas Natural Resources Code §§33.201 - 33.212; see, 31 Texas Administrative Code (TAC) §§69.91, 69.93, 501.1 - 501.34.

The proposed repeal of §59.134, concerning Rules of Conduct, is necessary because the department is restructuring and reorganizing its contents in proposed new §59.134.

The proposed amendment to §59.41, concerning General Statement, would alter subsection (c) to acknowledge that other state agencies also acquire and manage historic sites. Specifically, in accordance with House Bill 12, as enacted by the 80th Texas Legislature (2007), 18 State Historic Sites were transferred from the department of the Texas Historical Commission. Similarly, Senate Bill 1659, also enacted by the 80th Texas Legislature, transferred the Texas State Railroad to the Texas State Railroad Authority. Previously, by House Bill 2025, enacted by the 79th Texas Legislature (2005), the National Museum of the Pacific War, formerly known as the Fleet Admiral Chester W. Nimitz Memorial Naval Museum to the Texas Historical Commission.

The proposed amendment to §59.42, concerning Chronology and Thematic Organization, would alter subsection (a) to replace the word "balanced" with the word "full" with respect to interpretation of the heritage of Texas. The proposed amendment is necessary because "full" better describes the goal of department interpretive programs that all aspects of Texas heritage will be addressed.

The proposed amendment to §59.43, concerning Acquisition Guidelines, would alter subsection (a)(4) to remove the term "aboriginal" and replace it with a reference to "pre-European contact inhabitants." The amendment is necessary to replace obsolete terminology with modern terminology.

The proposed amendment to §59.44, concerning Development Guidelines, would alter subsection (c)(1) to eliminate a reference to the General Services Commission, which no longer exists, and replace it with a reference to the Texas Procurement and Support Services (TPASS) program of the Texas Comptroller of Public Accounts and the Texas Facilities Commission, which assumed duties formerly performed by the General Services Commission.

The proposed amendment to §59.45, concerning Methods of Additional Funding Other Than Departmental, would eliminate subsection (b), which requires the executive director to present applications for non-departmental sources of funding to the commission for consideration prior to department acceptance of such funds. The provision is being eliminated as duplicative. Commission approval and/or acknowledgment of donations over $500 is required by statute and by other department regulations. Texas Government Code §575.003; Texas Parks and Wildlife Code §§11.026, 11.0182; 31 TAC §51.70 and §51.71.

The proposed amendment to §59.46, concerning Maintenance Guidelines, would add the phrase "and other professional standards" to subsection (a) to acknowledge that the standards of the U.S. Department of the Interior concerning treatment of historic properties are not the sole source of department information concerning the subject. For example, Texas Antiquities Code, Texas Administrative Code, and department procedures also apply.

The proposed amendment to §59.47, concerning Personnel Selection and Training Guidelines, would replace the word "prehistory" with the word "archeology" in paragraph (4) to replace an obsolete term with a more accurate reference to a professional discipline .

The proposed amendment to §59.61, concerning General Objectives (regarding administration of the state parks system) would replace the phrase "purpose and scope" with the term "mission, "replace a reference to "public lands" with a reference to the "state park system," and revise the section to qualify that the department's stewardship of the state parks system is based on sustainability and best management practices in the interest of encouraging the citizens of the state to understand and appreciate the state's cultural, historical and natural heritage. The proposed amendment also eliminates archaic capitalization conventions in the word "state." The amendment is necessary to specifically identify the state park system as the entity being addressed in the rule, to acknowledge modern developments in state park system management, and to eliminate obsolete grammatical usage.

The proposed amendment to §59.62, concerning Parks and Wildlife Land Classification--Policy, would alter paragraph (1) to refer to lands "managed or operated as state parks" rather than lands "owned or leased by Texas Parks and Wildlife Department, except coastal preserves, scientific areas, fish hatcheries, boat ramps and administrative properties" with respect to the classification policy. The department is required by Parks and Wildlife Code to "establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites." Texas Parks and Wildlife Code §13.001(b). The subject of Chapter 59 is state parks. Therefore, the applicability of the section is being narrowed to primarily focus on those lands managed or operated as unites of the state parks. However, to ensure that the required department property classifications are included, the amendment includes a reference to department properties classified as wildlife management areas, as addressed in Chapter 65, Subchapter H.

The proposed amendment to §59.62 also would clarify that management and operation of units of the state park system will be in accordance with the classification system and appropriate management plans developed for each unit of the state park system. The proposed amendment also eliminates language concerning public input regarding park management plans and public hunting that is duplicative of the Parks and Wildlife Code and other department regulations. Parks and Wildlife Code, §13.020, requires a public hearing before the commission approves a park master development plan. Similarly, rules regarding hunting on public lands, including state parks, are addressed in Chapter 65, Subchapter H. Also, state parks are scheduled for public hunting activities by action of the commission on an annual basis in a public meeting conducted in accordance with the Texas Open Meetings Act (Government Code, Chapter 551).

The proposed amendment to §59.62(3) would add "cultural resource preservation" to the items addressed by management plans. Cultural resource preservation has always been an important consideration, and the proposed amendment is intended to make this explicit.

The proposed amendment to §59.62 would also eliminate current paragraph (5), which is an unnecessary explanation of terms such as "may" and "shall" that are commonly understood without elaboration. It is the department's intent that such phrases be interpreted in accordance with rules of statutory construction, including those contained in Government Code, Chapters 311 and 312.

The proposed amendment to §59.63, concerning Definitions, would modernize and clarify the definitions in the section. The word "title" is replaced with the word "chapter" to clarify that the terms defined are for the purpose of Chapter 59, rather than the entirety of Title 31 of the Texas Administrative Code.

The proposed amendment would eliminate paragraph (1) because the term "ecoregions" is not used in the rules.

The proposed amendment would alter current paragraph (2), redesignated as paragraph (1), to clarify that "low impact use" in some instances may result in irreversible impacts that are within acceptable limits of change.

The proposed amendment to current paragraph (3), redesignated as paragraph (2) would amend the definition of a "management plan" to replace the reference to "Parks and Wildlife lands" with a narrower reference to lands "within the state park system" which is a more accurate description of applicability.

The proposed amendment to current paragraphs (4) and (5), redesignated as paragraphs (3) and (4), respectively, would clarify that "natural biodiversity" and "natural communities" are understood to mean plants and animals indigenous to Texas and the interaction of those plants and animals.

The proposed amendment to current paragraph (6), redesignated as paragraph (5), would replace a reference to "Public Hunting Lands Hunting and Fishing Proclamation" with a reference to the "Public Lands Proclamation," which is the correct title of that document.

The proposed amendment to current paragraph (7), redesignated as paragraph (6) would implement a broad definition of "public use." The current definition simply lists a number of common activities, giving the impression that "public use" is constituted by those activities irrespective of the individual management priorities of individual units of the state parks system. The new definition simply states that public use is resource-oriented recreation under the operational rules of the department.

The proposed amendment to current paragraph (8), redesignated as paragraph (7), clarifies that "resource-oriented recreation" must be consistent with applicable rules and policies, which acknowledges that recreational activity on state parks is managed.

The proposed amendment to current paragraph (9), redesignated as paragraph (8), clarifies that "sound biological management" must be science-based and incorporate best management practices. The proposed amendment affirms the department's commitment to the management of biological resources in a responsible manner.

The proposed amendment to current paragraph (10), redesignated as paragraph (9) would amend the definition of "sustainability" to expressly acknowledge that the department's intent is to measure the effect of management regimes on the "sustainability" of natural assets in the state park system.

The proposed amendment to current paragraph (11), redesignated as paragraph (10) would clarify that "wilderness-type experience" is meant to be a true experience in a natural setting and insert a hyphen in the term.

The proposed amendment to §59.64, concerning Classification and Guidelines, would modernize the section. Classification of department lands is required by Parks and Wildlife Code, §13.001(b). The proposed amendment would eliminate current subsection (a) and all other references to "game management

areas," which is an archaic term. The department does not operate any game management areas. The department does operate wildlife management areas, which are governed under Parks and Wildlife Code, Chapter 81, and 31 TAC Chapter 65, Subchapter H.

The proposed amendment to current subsection (b), redesignated as subsection (a) would replace the term "recreational area" with the term "State Park." Under the classification system required by statute, areas under the administration of the state park system are classified as state parks, state natural areas, state historic sites, or state park and historic sites. The term "recreational area" is no longer used. The proposed amendment also would alter current subsection (b)(2)(B), redesignated as subsection (a)(2)(B) to remove the general guideline establishing a ratio of one developed acre to four developed acres with respect to development intensity on state parks. The ratio in the current rule is identified as a guideline, and the management goals of state parks currently address development intensity on a park-specific basis and generally exceed the ratio. The proposed amendment to current subsection (b)(3)(A), redesignated as subsection (a)(3)(A), would qualify that the department's goals in any park experience, in addition to recreational enjoyment, should also be aimed at educating users about park resources. The proposed amendment to current subsection (b)(3)(B), redesignated as subsection (a)(3)(B), would clarify that economic efficiency includes cost-recovery, which allows the department to incorporate fees that are consistent with the cost to the department of providing recreational opportunities for users. The proposed amendment to the subsection would also modify paragraph (5) to acknowledge that recreational activity on any given park must be appropriate to the natural, cultural and scenic features of the park.

The proposed amendment to current subsection (c), redesignated as subsection (b), would replace the term "natural areas" with the term "State Natural Areas" which is the term used in the names of these types of facilities under the jurisdiction of the department.

The proposed amendment to current subsection (d), redesignated as subsection (c), would replace the term "historic area" with the term "State Historic Site" to more appropriately address the fact that the state operates specific sites, rather than areas and to more closely align this term with Parks and Wildlife Code, §13.0053(b), which prohibits the reference to historic sites as "historic parks." References to state historic sites are added throughout the subsection to ensure clarity. The proposed amendment also would replace an outdated reference to statutory law with a reference to the Parks and Wildlife Code in current subsection (d)(1)(A), redesignated as subsection (c)(1)(A).

The proposed amendment to current subsection (d)(3)(A), redesignated as subsection (c)(3)A), would remove the term "all," which is unnecessary. The proposed amendment to paragraph (3)(A) would also remove the term "representation," which is redundant because the term "interpretation" by definition includes representation.

The proposed amendment to current subsection (d)(3)(B), redesignated as subsection (c)(3)(B), would clarify that aesthetic integrity is an important consideration in the operation of a state historic site, as the aesthetic characteristics of a site are an inherent component of historical importance. The proposed amendment also replaces the term "design intent" with the term "character defining elements" in order to more completely describe the nature of elements that should not be obscured in the development and operation of historic sites. The proposed amendment also replaces the term "resource oriented" with "sustainability" and "resource oriented" which are terms that are being altered under the proposed amendment to §59.63, concerning Definitions.

The proposed amendment to §59.64 would add new subsection (d) to delineate guidelines for the selection, development, operation, use, and management of sites that are operated as hybrid state parks and historic sites. A state park and historic site is an area established for the preservation, interpretation and public use of prehistoric and historic resources of statewide or national significance that also offers substantial recreational opportunities for visitors.

Proposed new subsection (d)(1) would establish that state parks and historic sites be designated by the Parks and Wildlife Commission, using criteria established for state park and historic site classification.

Proposed new subsection (d)(2) would address development of facilities classified as a state park and historic site. Proposed new subsection (d)(2)(A) would establish that development of recreational features within a state park and historic site should only be provided when there is a demonstrated demand for these facilities and/or when such features facilitate additional appreciation of the historic resource. Such features should be located where they are not detrimental to the overall historical significance of the site, and the natural environment. The department's intent is to balance the historical significance of a site with recreational uses that would not obscure or detract from that significance. Proposed new subsection (d)(2)(B) would provide that the intensity of recreational development at a state park and historic site should be within the carrying capacity of the resource. Similarly, facility design and construction materials should be aesthetically pleasing, and when feasible, consistent with the character of the historical feature. The proposed amendment is intended to provide a broad guideline to ensure that development of a resource is consistent with its overall historical character and capacity for multiple uses.

Proposed new subsection (d)(3) would address the operation of a state park and historic sites. Proposed new subsection (d)(3)(A) would require that preservation, interpretation, restoration, and/or reconstruction activities be in accord with documented historical, archeological and architectural information. In a similar vein, proposed new subsection (d)(3)(B) would specify that the historical and aesthetic integrity of a historic site should be preserved, and encroachments from conflicting uses or facilities should be avoided. Original material and character-defining elements should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience except when unavoidable to comply with rules or statutes pertaining to health, safety or architectural barriers. The intent of the proposed new paragraph is to preserve to the greatest extent possible the unique aspects of a site that inform and define its cultural significance.

Proposed new subsection (d)(4) would address use of state park and historic sites. Proposed new subsection (d)(4)(A) would establish that state park and historic sites provide for appropriate and sustainable resource-oriented recreation or public use that is not detrimental to the long-term stewardship of the cultural and natural resources. The intent of the proposed new paragraph is to ensure that public use not degrade the essential qualities of the site that make it valuable and significant. Proposed new sub-

section (d)(4)(B) would provide that state park and historic sites be used to provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other public uses permit. It is the policy of the commission that multiple use of department lands be afforded in order to maximize the value of those lands to the public.

Proposed new subsection (d)(5) would address management of state park and historic sites. Proposed new subsection (d)(5)(A) would stipulate that state park and historic sites be managed to insure the continued conservation of significant cultural features and natural resources. Proposed new subsection (d)(5)(B) would stipulate that natural resource management should maintain and restore natural communities and biodiversity consistent with the primary goals of the site. Proposed new subsection (d)(5)(B) would stipulate that sites be managed in accordance with a site management plan. The intent of the proposed new subsection is to acknowledge that the department has a duty to provide for the continued availability of important cultural and natural sites for the future enjoyment of the public.

The proposed amendments to §§59.131, 59.132 and 59.133 are to update state park system operational rules. The operational rules govern the required conduct of individuals enjoying state park system sites.

The proposed amendment to §59.131, concerning Definitions, consists of several components. The term "chapter" is replaced with the term "subchapter" to reduce confusion regarding terms that may be used differently in other parts of Chapter 59.

The definition of "all terrain vehicle" in current paragraph (1) has been deleted and a modified definition has been included in the definition of "motor vehicle" in proposed new paragraph (11).

A new definition of "bicycle" has been added as proposed new paragraph (2). This definition is based on the definition in Transportation Code, §541.201.

A new definition for "camping" has been added as proposed new paragraph (5) to describe the activities constituting camping in a state park facility.

A new definition of "equine" has been added as proposed new paragraph (9).

The definition of "motorcycle" in current paragraph (1) has been deleted and a modified definition has been included in the definition of "motor vehicle" in proposed new paragraph (11).

A new definition of "motor vehicle" has been added as proposed new paragraph (11). In addition to a general reference to a "motor powered vehicle," the new definition references the Transportation Code definition for an all-terrain vehicle, a motorcycle, a golf cart, a moped, a neighborhood electric vehicle, a pocket bike or mini-motorbike, and a motor assistance scooter. An electric bicycle is also included in the definition. However, the definition clarifies that "motor vehicle" does not include a wheelchair, a motorized wheelchair or a motorized mobility device. A "motorized mobility device" is defined in proposed new paragraph (12) based on the definition contained in Transportation Code, §542.009.

A definition of "pet" has been added as proposed new paragraph (15) to refer to domesticated companion animals and to clarify that dangerous wild animals, wildlife, livestock, any species that is not normally domesticated, and any species that may not be legally possessed are not considered a "pet" under this subchapter.

The definition of "public place" in current paragraph (13) has been redesignated as proposed new paragraph (17), and would clarify that "public place" does not include the interior spaces of cabins, shelters, and other enclosures reserved or used by visitors. The term "public place" is used in proposed new §59.134(b), which prohibits the consumption or display of an alcoholic beverage in a state parks. The intent of the amended definition of "public place" is to more clearly delineate the areas in parks not considered to "public places." The department allows the responsible consumption of alcohol but does not condone or tolerate behavior that disrupts the enjoyment of other park visitors.

The definition of "public nudity" in current paragraph (14) is being deleted. The contents of this subsection are being incorporated into proposed new §59.134(n) to clarify the prohibited conduct.

The definition of "state park" in current paragraph (15), which has been redesignated as proposed new paragraph (18), has been modified to conform with changes proposed for §59.64 regarding classification of facilities within the state park system. The definition of "state park" in this subchapter should refer to all classifications of facilities in the state parks system, specifically, state parks, state historic sites, state natural areas and state park and historic sites.

The definition of "unattended pet" in current paragraph (16), which had been redesignated as proposed new paragraph (19), would clarify that an "unattended pet" is a pot not under the control of the person responsible for the pet.

The definition of "wildlife" in current paragraph (17), which has been redesignated as proposed new paragraph (20), has been revised based on the definition of "wild" in reference to animals as contained in Parks and Wildlife Code, §1.101.

The proposed amendment to §59.132, concerning General Rules, would modify subsection (b) to clarify that department employees, peace officers and emergency personnel may be exempt from the requirements of Chapter 59, Subchapter F, rather than all of Chapter 59, as necessary to carry out their official duties.

The proposed amendment would add new subsection (c) to clarify that the director may suspend state parks operational rules by written order in response to a natural disaster or similar emergency. In the event of a natural disaster or other emergency, such as the recent hurricanes along the Texas coast, it may be necessary to waive the requirements of this subchapter to protect persons and property, or provide assistance to dislocated persons or other similar assistance.

The proposed amendment to current subsection (d), redesignated as subsection (c) would correct a grammatical error regarding pronoun agreement.

The proposed amendment to §59.133, concerning Closing Hours and Overnight Use, would alter subsection (a) to clarify that closing hours and opening hours on state parks must be established by written order of the executive director of the department. The intent of the amendment is to provide a record of established closing and opening hours to avoid confusion and misunderstandings. The proposed amendment also would alter subsection (b) to remove unnecessary language and add clarity. The change to subsection (b) is nonsubstantive.

Proposed new §59.134, concerning Rules of Conduct, retains many of the same elements contained in current §59.134, which is proposed for repeal; however, proposed new §59.134 makes a number of organizational changes to consolidate rules addressing similar subjects in an effort to make the rules more reader-friendly and intuitive. For example, the new rule consolidates into separate subsections rules regarding minors, animals, cultural and natural resources, motor vehicles and use of state park facilities. Similarly, the subsections have been organized alphabetically to facilitate location of rules by subject matter.

Also, throughout the proposed new section, the phrase "for any person" is added to the phrase "it is an offense." The change is necessary to clearly tie personal involvement to an action defined as an offense, which assists in law enforcement activities and prosecutions for alleged unlawful behavior.

Proposed new §59.134(a) regarding abandoned and unattended property, would make it an offense for any person to abandon a vehicle or other personal property, or to leave any type of property unattended in a manner that creates an unsafe condition or to leave property unattended or in an undesignated location after park closing hours. This provision is very similar to current §59.134(w), which it replaces.

Proposed new §59.134(b), regarding alcoholic beverages, would make it an offense for any person to consume or display an alcoholic beverage in public or to sell alcoholic beverages in a state park. This provision is similar to current subsection (w), which it replaces; however, proposed new subsection (b) would prohibit a person from displaying any alcoholic beverage in public, regardless of whether the container is open. The department allows the responsible consumption of alcohol but does not condone or tolerate behavior that disrupts the enjoyment of other park visitors. The definition of "public place" is addressed in the proposed amendment to §59.131(16).

Proposed new §59.134(c), regarding animals, includes provisions regarding pets, equines, and wildlife, all of which are defined in the proposed amendment to §59.131. Proposed new subsection (c) would make it an offense for any person to bring into or possess within a state park, or to release into a state park any animal, unless otherwise authorized by the subsection. Proposed new subsection (c)(1), regarding equines, would require that persons handle equines in a state park in a way that is safe for the person and the equine and to ensure protection of the state park's natural and cultural resources. Proposed new subsection (c)(2) would require that persons possessing pets in a state park do so in a manner that does not harm the state park or interfere with other persons' enjoyment of the park. The department does not wish to ban pets from state parks, so staff has determined that it is necessary to create a provision to require persons who bring pets to state parks to take responsibility for cleaning up after them. Similarly, there are areas on many state parks where pets are inappropriate, such as dining facilities, swimming pools, and other areas where pets pose health threats or can be a danger. Such areas are clearly marked or identified in park literature, and it is necessary to clearly provide for an offense if pets are brought into such areas. This provision is similar to current subsections (e) and (bb) which it replaces.

Proposed new §59.134(d), regarding arms and firearms, would make it an offense for any person to display or discharge a firearm in a state park except in connection with a public hunting event in a state park or by order of the director. This provision is similar to current subsection (f), which it replaces; however, the proposed new subsection eliminates provisions prohibiting possession of a firearm, which is intended to provide more consistency with the concealed weapon permit laws. Also, provisions regarding the discharge of a projectile into a park have been deleted. Parks and Wildlife Code, §62.0121, as amended by the 79th Texas Legislature (2005) creates an offense for a person engaging in hunting or recreational shooting to discharge a firearm across a property line.

Proposed new §59.134(e), regarding closed areas, would make it an offense for any person to interfere with development, construction or management of a state park or to remain in a state park that has been closed. This provision is very similar to current subsection (i), which it replaces.

Proposed new §59.134(f), regarding entrance and user fees, would make it an offense for any person to enter a state park without satisfying the fee requirements. This subsection is unchanged from current subsection (a), which it replaces.

Proposed new §59.134(g), regarding facilities, use would make it an offense for any person to use state park facilities in an inappropriate manner. Specifically, this subsection prohibits keeping, using or arranging motor vehicles, trailers, camping and other equipment except as otherwise authorized, exceeding the use limit of a facility, an remaining past the established check-out times. This provision is very similar to current subsection (b) and (aa), which it replaces.

Proposed new §59.134(h), regarding fires, firewood, smoking and fireworks, would make it an offense for any person to build a fire, smoke, gather firewood, or possess fireworks in a state park, except where expressly authorized; however, portable gas-fueled camp stoves would be permitted in designated areas. The proposed new rule would clearly state that portable gas-fueled camp stoves are lawful in designated campsites or picnic areas, which is necessary to provide allowances for fire sources that are highly controlled. The proposed new rule also would specifically allow park personnel to prohibit open fires when the department has determined that a fire danger exists or when a burn ban has been instituted by local government ordinance, which is necessary to address situations in which the temporary or persistent danger of open fires to a park, staff, or visitors necessitates the prohibition of their construction. The proposed new section also creates a stipulation that the gathering of firewood be by permit only. Staff has attempted on an informal basis to discourage the collection of firewood by park visitors; however, there have been instances where such encouragement has been ignored, and the department therefore believes that the creation of an offense is justified. In many parks, firewood is simply not available and the collection of firewood is injurious to vegetative communities, the wildlife that uses vegetative communities, and the aesthetic value of vegetation to visitors. The proposed new section also would stipulate that it is an offense to leave a fire unattended. Unattended fires are a serious potential source of danger to parks, staff, and visitor, and the department believes it is necessary to prohibit them. This provision is similar to current subsection (d), which it replaces.

Proposed new §59.134(i), regarding metal detectors, would make it an offense for any person to operate a metal detector in a state park unless authorized by permit. This provision is very similar to current subsection (l), which it replaces.

Proposed new §59.134(j), regarding minors, would address supervision requirements for minors and the responsibilities of persons supervising minors. The department uses the provisions of Penal Code, §22.041, to require that all children under 15 years

of age be supervised by a parent, legal guardian, or other responsible adult over the age of 17. For minors between the ages of 15 and 17, the department desires to allow entry and overnight privileges if the person is accompanied by a parent or guardian, if the person possesses written consent from a parent or legal guardian, if the person is part of a group that is supervised by a responsible adult, or if the person is legally married. This subsection provides that "overnight hours" is the time between the state parks' closing time and opening time. This subsection also clarifies that supervision of a minor requires at least one adult for every 15 persons required to be supervised. Also, the subsection clarifies that the person supervising a person under age 17 is responsible for the conduct of the person under age 17. The department's intent is to allow minors to use and enjoy state parks, but only under safe and supervised conditions. This provision is similar to current subsections (u) and (m), which it replaces.

Proposed new §59.134(k), regarding motor vehicles, would address prohibited conduct regarding operation of a motor vehicle, parking, speed limits, traffic and trail use. The proposed new subsection would require vehicles and trailers to be confined to designated roads and parking areas and create an offense for operating a vehicle in a state park if the vehicle is not licensed and inspected as required by Texas motor vehicle laws, except as specifically authorized by permit. The department has determined that vehicles that are not licensed or inspected as required by state law are a safety hazard to staff and visitors and should be prohibited except by permit, such as vehicle use by disabled persons during public hunting activities. The proposed new subsection also requires compliance with applicable speed limits and the operation of a vehicle in a way that ensures safety and does not interfere with other user's enjoyment of a state park. The proposed new subsection is intended to provide more explicit detail in the description of the sorts of places to which the rule applies. This provision is similar to current subsections (p), (n), (s), and (r), which it replaces.

Proposed new §59.134(l), regarding natural and cultural resources, would make it an offense for any person to disturb or destroy plant life, geological features or cultural features in a state park and prohibit the transplantation of plants in state parks. There have been incidents in which persons have attempted to plant various types of vegetation in state parks. In order to protect the environment in state parks, the department must prohibit introductions of plant life, which could be injurious by spreading pathogens or disease or pernicious by displacing or adversely affecting native vegetation. The department believes it is necessary to add additional detail to this definition in order to make completely clear that cultural resources include buildings, structures, cultural features, rock art, and artifacts. The proposed new section would allow the disturbance of cultural artifacts by written order of the executive director, which would be necessary only in rare instances in which such disturbance is an unavoidable consequence of some other necessary activity. This provision is similar to current subsections (c), (cc), and (dd), which it replaces.

Proposed new §59.134(m), regarding peace and quiet, would make it an offense for any person to create disturbances within a state park or to create excessive noise, which is noise that is capable of negatively affecting other park users. Additionally, the proposed new rule would allow the department to establish specific allowable noise levels for specific parks or parts of parks by written order of the director. The proposed new subsection is necessary because the enjoyment of park visitation can be ruined by loud, obnoxious, or unwanted intrusions of noise. To keep noise at a level that does not negatively affect other park users, the department has determined that it is necessary to provide for an offense for creating noise capable of negatively affecting other park users, and, if necessary, to establish noise levels in specific places by order of the executive director. This provision is similar to current subsection (v), which it replaces.

Proposed new §59.134(n), regarding public nudity, would make it an offense for any person to appear nude in a state park. This provision is very similar to current subsection (h), which it replaces.

Proposed new §59.134(o), regarding soliciting, would make it an offense for any person to solicit funds or sell items on a state park unless authorized by the director. This provision is similar to current subsection (o), which it replaces.

Proposed new §59.134(p), regarding water recreation, would make it an offense for any person to swim, boat, or participate in other water recreation except in authorized areas at authorized times. This provision would also prohibit glass containers in swimming areas. This provision is similar to current subsections (x) and (y), which it replaces.

Proposed new §59.134(q), regarding water, wastewater, sewage, and garbage, would make it an offense for any person to use or dispose of water or trash in a state park unless otherwise authorized. This provision is similar to current subsections (ee) and (ff), which it replaces.

Mr. Walt Dabney, State Parks Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will not be fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Dabney also has determined that for each of the first five years the rules as proposed are effect, the public benefit anticipated as a result of enforcing or administering the rules will be clearer and more understandable rules, improved guidance for the classification and operation of properties of all types within the state park system, and improved provisions for the health, safety, and enjoyment of park visitors.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or micro-businesses.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Kevin Good, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4415 (e-mail: kevin.good@tpwd.state.tx.us).

SUBCHAPTER C. ACQUISITION AND DEVELOPMENT OF HISTORIC SITES, BUILDINGS AND STRUCTURES

31 TAC §§59.41 - 59.47

The amendments are proposed under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

The proposed amendment affects Parks and Wildlife Code, Chapter 13.

§59.41. General Statement.

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

(c) Although the commission recognizes that certain historic sites have been and will continue to be authorized by specific statutes, this section is directed toward the implementation of §13.005, Texas Parks and Wildlife Code, which designated the Parks and Wildlife Department as a [~~the~~] state agency responsible for acquisition and administration of state historic sites, buildings and structures.

(d) - (e) (No change.)

§59.42. Chronology and Thematic Organization.

(a) The executive director is directed to organize historic sites presently in department ownership into an overall thematic structure and to recommend for acquisition historic sites which will complement a full [~~balanced~~] interpretation of the heritage of Texas.

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

§59.43. Acquisition Guidelines.

(a) In order to be considered for acquisition, historic sites, buildings and structures must evidence a significant association with the broad history of the state as defined in §13.005, Texas Parks and Wildlife Code. Such historic sites and structures include the following.

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

(4) A structure or site that contributes significantly to the understanding of pre-European contact inhabitants of what became Texas [~~aboriginal man in the nation or state~~].

(b) (No change.)

§59.44. Development Guidelines.

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

(c) The commission finds that a state historic sites program representing the broad heritage of the State of Texas depends upon the conservation of structures and sites possessing outstanding historical or cultural significance. To ensure the highest degree of professional proficiency in restoration and preservation, the commission directs the executive director to establish an equitable system for the awarding of projects to private firms desiring departmental restoration contracts, considering the following.

(1) Architectural/engineering firms. The commission directs the executive director to ensure that all sources of information are utilized regarding the qualifications and competence of architectural/engineering firms desiring restoration work with the department. These sources include Comptroller of Public Accounts - Texas Facilities Commission [~~General Services Commission~~] files on all firms expressing an interest in state building projects, departmental files on private firms expressing an interest in restoration projects, Texas Historical Commission files, and professional societies with architectural/engineering disciplines. The formulation and subsequent approval of the historical development plan shall precede the selection of a suitable firm inasmuch as this facilitates the consideration of firms which have exhibited a proficiency commensurate with the nature of the specific project, and should meet Secretary of the Interior Standards for Rehabilitation. Consultation with the various firms under consideration if marginal qualifications exist shall be a standard procedure to further determine the firms' capabilities for the approved project.

(2) (No change.)

§59.45. Methods of Additional Funding Other Than Departmental.

[~~(a)~~] The executive director is directed to investigate the availability of any funding sources other than departmental sources for use in the acquisition or development of historic sites. Application should be made for any available funding which conforms to similar department grant applications in other areas, such as outdoor recreation.

[~~(b) The executive director is directed to present available grant awards to the commission for their consideration prior to department acceptance of funds under such grants.~~]

§59.46. Maintenance Guidelines.

(a) Recognizing that the maintenance of historic structures differs from the maintenance of other buildings in that the primary goal is the preservation of originality in design, materials, and craftsmanship, the commission finds that it is mandatory that persons involved with maintenance of such sites respect the relationship between the past and present, and possess an appreciation of the preservation of the old fabric of the building, thus it is imperative that an understanding be gained of the particular problems involved with the maintenance of historic buildings in order to successfully accomplish this preservation goal. The commission finds that it is the responsibility of any staff member involved with the maintenance of historic buildings to become thoroughly familiar with the building itself, to study carefully the intimate values and nature of the site to gain a knowledge of how it was built, to appreciate the craftsmanship involved and to recognize potential difficulties, thereby gaining added insight and understanding of the structure to achieve the foremost maintenance goal of keeping the structure and grounds in the best possible condition at all times. Personnel should be familiar with the Secretary of the Interior's Standards for the Treatment of Historic Properties and other professional standards.

(b) (No change.)

§59.47. Personnel Selection and Training Guidelines.

(a) (No change.)

(b) Recognizing the important duties and potential contributions of historic sites personnel, the commission directs the executive director to implement the following guidelines in selecting and regular training of parks personnel to be employed at historic sites:

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

(4) To increase the historic site personnel knowledge of the heritage of the state, the training program shall provide comprehensive

surveys of Texas history, archeology [prehistory], and architecture with emphasis based on the particular sites. The survey should include a selected bibliography, enabling the personnel to complement their knowledge of the three disciplines.

(5) - (6) (No change.)

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900505
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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SUBCHAPTER D. ADMINISTRATION OF THE STATE PARK SYSTEM

31 TAC §§59.61 - 59.64

The amendments are proposed under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

The proposed amendment affects Parks and Wildlife Code, Chapter 13.

§59.61. General Objectives.

In guiding the mission [purpose and scope] of the Texas Parks and Wildlife Department State Park System [public lands], the objectives of the Texas Parks and Wildlife Commission are:

(1) to seek out and protect [through education, cooperative agreements, partnerships, conservation easements, and acquisition] high quality examples of the state's [State's] natural and cultural heritage, and sensitive habitats or resources;

(2) to provide opportunities for sustainable, resource-based [resource based] outdoor recreation;

(3) to encourage [impart to the people of Texas] an understanding and appreciation of the state's [State's] cultural, historical and natural heritage;

(4) to promote environmental education, research, and demonstration of the best management practices in the stewardship of the state's [State's] diverse natural and cultural resources; and

(5) to join with all the citizenry of this and other states and nations in promoting the conservation of natural, historical and recreational resources.

§59.62. Parks and Wildlife Land Classification--Policy.

It is the policy of the Parks and Wildlife Commission that:

(1) The executive director is authorized to implement the following classification and guidelines for existing and future lands managed or operated by the department [owned or leased by Texas Parks and Wildlife Department, except coastal preserves, scientific areas, fish hatcheries, boat ramps and administrative properties]. The [Initial classification and subsequent classification changes shall be subject to] Texas Parks and Wildlife Commission shall determine the appropriate classification [review and approval].

(2) Classification of departmental lands under this system will not affect existing site names, naming policy, on-site signage or literature unless a new category so changes uses that it is misleading. Multiple classifications may occur within individual sites and the use of a specific name may be for convenience or to indicate a primary classification without precluding uses set forth under other classification categories.

(3) The use and management of individual units of the state park system [Department lands] will be addressed on a site-specific [site specific] basis, in accordance with the classification system and appropriate management plans[, as management plans are developed and refined with opportunity for appropriate public input. Management plans shall optimize opportunities for public hunting and other public uses when appropriate on all Department lands].

(4) Prior to classification or formal approval of individual site management plans for specific units of the state park system [public lands], provision for public use shall be made in accordance with sound biological management and cultural resource preservation, taking into consideration past patterns of use, and existing rules and regulations.

(5) Units of the state parks system will be classified as a State Park, a State Natural Area, a State Historic Site, or a State Park and Historic Site. [In interpreting this title, the serial designation of topics under a heading is not intended to denote a priority order or a preference. Furthermore, the term "may" is intended to be permissive and authorize discretion, the term "should" is intended to be directory and identify a preference when no other constraining conditions are applicable, and the term "shall" is intended to be mandatory and require the prescribed action or decision. In all such cases, all applicable antecedent conditions are prerequisites to a final action or decision.]

(6) Properties operated and managed by the department as defined and described in Parks and Wildlife Code, §81.401 and §65.191 of this title (relating to Definitions) shall be classified as Wildlife Management Areas.

§59.63. Definitions.

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

[(1) Ecoregion--One of the ecological regions or subregions of Texas, based on the primary vegetational types, as broadly defined by:]

[(A) Schuster J.L. and S.L. Hatch. 1990. Texas Plants--An Ecological Summary in: Checklist of the Vascular Plants of Texas. S.L. Hatch, K.N. Gandhi, and L.E. Brown. MP-1655. TAES, TAMU, College Station, Texas; or]

[(B) L.B.J. School of Public Affairs. 1978. Preserving Texas' Natural Heritage. L.B.J. School of Public Affairs, University of Texas, Austin, Texas; or]

[(C) Gould, F.W. 1962. Texas Plants--A Checklist and Ecological Summary. MP-585. TAEX Bulletin, TAMU, College Station, Texas. 112pp.]

(1) [(2)] Low Impact Public Use--Development or use of a site which results in minimal long-term irreversible adverse impact, or is within acceptable limits of change [Use or development of a specific site to minimize long term irreversible impact].

(2) [(3)] Management plan--A document that sets forth the framework for resource stewardship, conservation, public use, facility maintenance, operations and public safety for a specific unit (or subunit) of [Parks and Wildlife] lands within the state park system.

(3) [(4)] Natural biodiversity--The complement of indigenous plants and animals that is expected to occur on an ecological site type, in natural communities or over a landscape.

(4) [(5)] Natural communities--An assemblage of organisms indigenous to an area that [which] is characterized by a distinct combination of species occupying habitats or [common] ecological zones and interacting with one another, their environment, and natural processes. An array of plants and animals expected for any given ecological site type.

(5) [(6)] Public Hunting--Hunting by the public of wildlife, including feral and exotic species on departmental controlled lands as authorized by the Commission under the Public [Hunting] Lands [Hunting and Fishing] Proclamation.

(6) [(7)] Public Use--Resource-oriented recreation or other site-appropriate uses permitted under Subchapter F of this chapter (relating to State Park Operational Rules) [Resource oriented recreation or other site appropriate uses, which may include bicycle riding, birdwatching, boating, camping, canoeing, driving and walking nature trails, field trials, fishing, hiking, horseback riding, hunting, nature study, photography, rock climbing, swimming, wildlife viewing, or other appropriate activities].

(7) [(8)] Resource Oriented Recreation--Recreational activities the enjoyment of which is dependent upon or enhanced by a natural resource, consistent with applicable rules and policies of the department.

(8) [(9)] Sound Biological Management--The use of the best science-based information available to the department [Texas Parks and Wildlife Department] in setting living resources management goals and objectives and in determining the techniques to be used in achieving those goals, including best management practices determined by the Parks and Wildlife Commission.

(9) [(10)] Sustainability--The capability of natural systems to maintain themselves over time as defined by site-specific, measurable [site specific] management goals and objectives.

(10) [(11)] Wilderness-type [Wilderness Type] Experience--Recreational activities, in a natural setting, intended to provide the user with an unimpaired experience [the wildlerness associated benefits] of open space, solitude, and few man-made intrusions[, in a natural setting].

§59.64. Classification and Guidelines.

[(a) Classification. Game Management Areas. Game Management Areas are areas dedicated to wildlife management, research, demonstration, and appropriate public use.]

[(1) Selection.]

[(A) Game Management Areas should be areas possessing significant or potentially significant habitat values for the management and protection of wildlife and natural resources.]

[(B) Game Management Areas should be of sufficient size to provide opportunity for research and management of the wildlife and natural resources.]

[(C) Game Management Areas should be located to be representative of an ecoregion, or to meet priority wildlife habitat needs, or to provide education, hunting and other appropriate outdoor recreational opportunities for the public.]

[(2) Development.]

[(A) Facilities and supporting developments on Game Management Areas should be located and designed to minimize disturbance to natural and cultural resources.]

[(B) Long-term major facility development should be limited to selected Game Management Areas identified for their research, education, demonstration and public use values.]

[(C) Development of appropriate recreational facilities on Game Management Areas should be provided when there is a demonstrated demand.]

[(D) Capital improvements on Game Management Areas should provide the opportunity to enhance habitats and conditions for wildlife populations, demonstrate integrated agricultural practices beneficial to wildlife and their habitats, and provide access for appropriate public use.]

[(3) Operation.]

[(A) Game Management Areas should be operated to provide opportunities for the research, education and/or demonstration of effective wildlife habitat management practices.]

[(B) Game Management Areas may be operated to provide opportunities for outdoor classroom and other interpretive effort.]

[(4) Use.]

[(A) Game Management Areas may provide public hunting opportunity, when such use is not detrimental to the primary goals and management of the area and sound biological management, location, physical conditions, safety and other uses permit.]

[(B) Game Management Areas may provide other appropriate resource oriented recreation primarily through low impact public use, when such use is not detrimental to the long term stewardship and conservation of the natural and cultural resources as identified in the site management plan and as other uses permit.]

[(5) Management.]

[(A) Game Management Areas should be managed to maintain or enhance wildlife habitat and populations as such management is consistent with the site management plan.]

[(B) Game Management Areas should be managed for the research, education and demonstration of effective wildlife habitat management practices.]

[(C) Game Management Areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.]

(a) [(b)] State Parks [Classification: Recreational Areas]. State Parks [Recreational Areas] are areas of natural or scenic charac-

ter, often containing historical, archeological, ecological, or geological values selectively developed to provide resource-oriented recreational opportunities.

(1) Selection.

(A) State Parks [~~Recreational Areas~~] should be areas possessing natural or scenic values, that are adaptable to both active and passive recreational development and use;

(B) State Parks [~~Recreational Areas~~] should be located to help meet the priority recreational needs of Texans, or where outstanding natural values of statewide significance create a substantial recreation demand; and

(C) State Parks [~~Recreational Areas~~] should provide recreational opportunities capable of attracting significant visitation on a regional or statewide basis.

(D) New acquisitions should normally include a minimum of 500 acres of land, but may include less in the case of an extraordinary recreational resource of statewide significance.

(2) Development.

(A) State Parks [~~Recreational Areas~~] should be developed to optimize recreational opportunities afforded by the site and to provide for a variety of facilities and activities while retaining the character of the natural setting.

(B) Intensity of development of a State Park [~~Recreational Area~~] should provide for the sustainability of the resource [~~and should generally not exceed a ratio of one developed acre to four undeveloped acres~~].

(C) Recreation facilities and supporting developments should be located and designed to minimize disturbance to natural and cultural resources.

(3) Operation.

(A) Visitor information and interpretive programs should be emphasized to provide the visitor with a more complete understanding of park resources and meaningful recreational experience.

(B) State Parks [~~Recreational Areas~~] should be operated in an economically efficient manner, with appropriate cost recovery [~~striving toward self-sufficiency~~], while not compromising the natural or cultural resources or the enjoyment thereof.

(4) Use.

(A) State Parks [~~Recreational Areas~~] should provide for a variety of resource oriented recreation and public uses not detrimental to the long term stewardship and conservation of the natural and cultural resources as identified in the site management plan.

(B) State Parks [~~Recreational Areas~~] may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area, and sound biological management, location, physical conditions, safety and other uses permit.

(5) Management.

(A) Resources within State Parks [~~Recreational Areas~~] should be managed to provide the opportunity for a quality and appropriate recreational experience while maintaining the natural, cultural and scenic features of the park.

(B) Habitat management should emphasize maintenance and restoration of natural communities, and natural biodiversity.

(C) State Parks [~~Recreational Areas~~] should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(b) [~~(c)~~] State [~~Classification:~~] Natural Areas. State Natural Areas are areas established for the protection and stewardship of outstanding natural attributes of statewide significance, which may be used in a sustainable manner for scientific research, education, aesthetic enjoyment, and appropriate public use not detrimental to the primary purposes.

(1) Selection.

(A) State Natural Areas should encompass examples of natural scenic beauty, natural communities, biological features, sensitive areas, or geological formations of statewide significance, or possess exceptional educational or scientific values.

(B) State Natural Areas [~~areas~~] should be large enough to protect the integrity of the features being protected, with adequate buffers to provide for public access and resource protection, and where feasible, include sufficient area to provide for a wilderness-type experience.

(C) New acquisitions should be selected on a priority basis determined by statewide significance, natural condition, and the degree to which the resource is threatened.

(D) State Natural Areas [~~areas~~] which duplicate the primary significance of a site presently preserved in public ownership will receive a lower priority for acquisition than those types of areas currently unrepresented in the public domain.

(2) Development.

(A) Development in State Natural Areas should be low-density in nature and limited to that appropriate for adequate control and sustainability of the resource, and for visitor access.

(B) Recreational development should be provided only where it facilitates additional appreciation of the unique resource and should not be detrimental to the natural environment nor encroach upon, damage or impair the scenic or natural features concerned.

(3) Operation.

(A) State Natural Areas should be operated in an economically efficient manner, emphasizing resource protection over public use and revenue generation.

(B) Visitor information and interpretation should be emphasized in State Natural Areas to increase the visitor's understanding and appreciation of the resource being preserved.

(4) Use.

(A) State Natural Areas should accommodate low impact, resource oriented recreation, not detrimental to the continued preservation and stewardship of the natural and cultural features as outlined in the site management plan.

(B) State Natural Areas may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other uses permit.

(5) Management.

(A) State Natural Areas should be managed, consistent with the site management plan, to insure the protection and perpetuation of the scenic or outstanding natural features.

(B) Habitat management should emphasize maintenance or restoration of natural communities and natural biodiversity, consistent with the primary goals of the area.

(C) State Natural Areas should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(c) [~~(d)~~] State Historic Sites [~~Classification: Historical Areas~~]. State Historic Sites [~~Historical Areas~~] are areas established for the preservation, interpretation and public enjoyment [~~use~~] of prehistoric and historic resources of statewide or national significance.

(1) Selection.

(A) State Historic Sites [~~Historical Areas~~] should have a significant association with the broad history of the state [~~State~~] as defined in Parks and Wildlife Code, §§13.005, 13.010, 13.011, and 13.301 [~~the Texas Historical Sites and Structures Act, Texas Civil Statutes, Article 6081s~~].

(B) The detailed selection criteria set out in the Historic Sites and Restoration Program Policy Statement, Section III, Acquisition Guidelines, as adopted by the Parks and Wildlife Commission, will serve as the guiding policy for selection of State Historic Sites [~~Historical Areas~~].

(2) Development.

(A) Development of recreational features at State Historic Sites should only be provided when there is a demonstrated demand for these facilities and/or when they facilitate additional appreciation of the historic resource, and where such facilities and activities are not detrimental to the overall historical significance of the site [~~program of the area~~], and the natural environment.

(B) The intensity of recreational development at State Historic Sites should be within the carrying capacity of the resource, and facility design and construction materials should be tasteful and when feasible consistent with the character of the historical feature.

(3) Operation.

(A) Preservation [~~All preservation~~], interpretation, [~~representation,~~] restoration, and/or reconstruction activities at State Historic Sites should be in accord with documented historical, archeological and architectural information.

(B) The historical and aesthetic integrity of a State Historic Site [~~Historical Area~~] should be preserved, and encroachments from conflicting uses or facilities should be avoided. Original material and character-defining elements [~~design intent~~] should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience except when unavoidable to comply with rules or statutes pertaining to health, safety or architectural barriers.

(C) Interpretation of State Historic Sites [~~Historical Areas~~] should reflect the overall statewide historical significance of the area.

(4) Use.

(A) State Historic Sites [~~Historical Areas~~] should provide for sustainability and resource-oriented [~~resource oriented~~] recreation or public uses that are not detrimental to the long term stewardship of the cultural and natural resources.

(B) State Historic Sites [~~Historical Areas~~] may provide public hunting opportunity when such use is not detrimental to the primary goals and management of the area and as sound biological management, location, physical conditions, safety and other public uses permit.

(5) Management.

(A) State Historic Sites [~~Historical Areas~~] should be managed to insure the continued conservation of significant cultural features.

(B) When natural resources are a significant component of a State Historic Site [~~an Historical Area~~], natural resource [~~habitat~~] management should emphasize maintenance and restoration of natural communities, and natural biodiversity, consistent with the primary goals of the area.

(C) State Historic Sites [~~Historical Areas~~] should be managed, consistent with the site management plan, to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or species of special concern as identified by staff.

(d) State Park and Historic Sites. A State Park and Historic Site is an area established for the preservation, interpretation and public enjoyment of prehistoric and historic resources of statewide or national significance that also offers substantial recreational opportunities for visitors.

(1) Selection. State Parks and Historic Sites shall be designated by the Commission, using the criteria set forth in this subsection:

(2) Development.

(A) Development of recreational features in a State Parks and Historic Site should only be provided when there is a demonstrated demand for these facilities and/or when they facilitate additional appreciation of the historic resource, and where such facilities and activities are not detrimental to the overall historical significance of the site, and the natural environment.

(B) The intensity of recreational development in a State Parks and Historic Site should be within the carrying capacity of the resource. Facility design and construction materials should be aesthetically pleasing, and when feasible consistent with the character of the historical feature.

(3) Operation.

(A) Preservation, interpretation, restoration, and/or reconstruction activities in a State Parks and Historic Site should be in accord with documented historical, archeological and architectural information.

(B) The historical and aesthetic integrity of a in a State Parks and Historic Site should be preserved, and encroachments from conflicting uses or facilities should be avoided. Original material and character-defining elements should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience except when unavoidable to comply with rules or statutes pertaining to health, safety or architectural barriers.

(C) Interpretation in a State Parks and Historic Site should reflect the significant cultural and natural resources of the site.

(4) Use.

(A) A State Park and Historic Site should provide for appropriate and sustainable resource oriented recreation or public enjoyment that is not detrimental to the long term stewardship of the cultural and natural resources.

(B) A State Park and Historic Sites may provide public hunting opportunity when such use is not detrimental to the primary

goals and management of the area and as sound biological management, location, physical conditions, safety and other public uses permit.

(5) Management.

(A) A State Park and Historic Site should be managed to insure the continued conservation of significant cultural features and natural resources.

(B) Natural resource management in a State Parks and Historic Site should emphasize maintenance and restoration of natural communities and biodiversity, consistent with the primary goals of the area.

(C) A State Park and Historic Site should be managed, in accordance with the site management plan, to address habitat needs of indigenous flora and fauna, including species and communities listed as threatened or endangered or species of special concern as identified by staff.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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31 TAC §59.75

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of 31 TAC §505.30, which requires the department to make consistency determinations regarding the Coastal Management Plan.

The repeal affects 31 TAC §505.30.

§59.75. Coastal Management Program.

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

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SUBCHAPTER F. STATE PARK OPERATIONAL RULES

31 TAC §§59.131 - 59.134

The amendments and new section are proposed under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; §13.0145, which authorizes the commission to enforce speed limits.

The proposed amendment and new section affects Parks and Wildlife Code, Chapter 13.

§59.131. Definitions.

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

[~~(1) All-terrain vehicle--Any motor vehicle having a saddle for the use of the rider, designed to propel itself with three or four tires in contact with the ground.~~]

(1) [~~(2)~~] Arms and firearms--Any device from which shot, a projectile, arrow, or bolt is fired by the force of an explosion, compressed air, gas, or mechanical device. To include, but not limited to, rifle, shotgun, handgun, air rifle, pellet gun, longbow, cross bow, sling shot, blow gun, or dart gun.

(2) Bicycle--A device that a person may ride, that is propelled by human power, and has two tandem wheels at least one of which is more than 14 inches in diameter.

(3) Artifacts--Objects used or modified by humans, including, but not limited to, arrow points, dart points, stone, bone, or shell implements or any other prehistoric or historic objects.

(4) Boat--A vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.

(5) Camping--The act of:

(A) occupying a designated camping facility;

(B) erecting a tent, or arranging bedding, or both, for the purpose of, or in such a manner as will permit, remaining overnight; and/or

(C) using a trailer, camper, or other vehicle for the purpose of sleeping during nighttime hours.

(6) [~~(5)~~] Cultural features--Include, but are not limited to, state archeological landmarks, archeological sites, historic sites and structures, pictographs and petrogryphs.

(7) [~~(6)~~] Department--The Texas Parks and Wildlife Department.

(8) [~~(7)~~] Director--The executive director of the Texas Parks and Wildlife Department or his or her designee.

(9) Equine--A species of animal belonging to the family equidae, including horses, ponies, donkeys, and mules.

(10) [~~(8)~~] Garbage--Trash, refuse, rubbish, household waste, medical waste, rubble, spoil, construction debris, yard clippings, offal, or any other similarly useless, noxious, or offensive material.

(11) Motor Vehicle--For purposes of this subchapter, a motor vehicle does not include a wheelchair, a motorized wheelchair or a motorized mobility device. A motor vehicle is a motor powered vehicle, including, but not limited to:

(A) any motor driven or propelled vehicle required to be registered under the laws of this state;

(B) an all-terrain vehicle as defined in Transportation Code, §502.001;

(C) a motorcycle as defined in Transportation Code, §501.002 and §541.201;

(D) a golf cart, as defined in Transportation Code, §502.001;

(E) a moped as defined in Transportation Code, §541.201;

(F) a neighborhood electric vehicle as defined in Transportation Code, §551.301;

(G) a pocket bike or mini-motorbike, as defined in Transportation Code, §551.301;

(H) an electric bicycle; or

(I) a motor assisted scooter, as defined in Transportation Code, §551.301.

(12) Motorized mobility device--A device designed for transportation of persons with physical disabilities that:

(A) has three or more wheels;

(B) is propelled by a battery-powered motor;

(C) has not more than one forward gear; and

(D) is not capable of speeds exceeding eight miles per hour.

[~~(9) Motorcycle--A two wheeled vehicle propelled by an internal combustion engine or other similarly powered mechanical device, to include motor bikes, mini-bikes, and trail bikes.~~]

(13) [~~(10)~~] Night--Any time from 1/2 hour after sunset to 1/2 hour before sunrise.

(14) [~~(11)~~] Person--Natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons acting individually, or by an agent, servant, or employee.

(15) Pet--A domesticated companion animal accompanying a person who enters or uses a state park. In no event shall a pet under this subchapter include the following:

(A) a dangerous wild animal, as defined in Health and Safety Code, §822.101;

(B) wildlife;

(C) livestock and exotic livestock as defined in Agriculture Code, §§1.003, 142.001, and 161.001;

(D) any species of animal that is not ordinarily domesticated; or

(E) any species of animal that a person may not legally possess.

(16) [~~(12)~~] Plant life--All plants including trees, dead or downed wood, shrubs, vines, wildflowers, grass, sedge, fern, moss, lichen, fungus, or any other member of the plant family.

(17) [~~(13)~~] Public place--Any place to which the public or a substantial group of the public has access. The interior spaces of the following are not considered public places:

(A) department [~~In the state park system areas that are not considered a public place are~~] cabins, screened shelters, recreation halls, group barracks, and lodges; and [~~,~~]

(B) tents, campers, trailers, motor homes, or any enclosed vehicle(s) that are used as camping equipment.

[~~(14) Public nudity--To disrobe or appear nude in public. Females are considered to be disrobed when their breasts below the top of the areola are exposed except when nursing a baby.~~]

(18) [~~(15)~~] State park--A state park, state historic site [~~park site, historical park~~], or state natural area that is [~~, recreational area or fishing pier,~~] administered, operated, or managed by the department.

(19) [~~(16)~~] Unattended pet--A pet that is unaccompanied or not under immediate control of the person responsible for the pet. Pets tied or secured outside of camping equipment or buildings are not considered under immediate control.

(20) [~~(17)~~] Wildlife--A species, including each individual of a species, that normally lives in state of nature is not ordinarily domesticated [~~Any wild animal, bird, amphibian, reptile, fish, shellfish, aquatic life, or invertebrate~~].

§59.132. General Rules.

(a) Upon finding a need for public safety or welfare, or preservation of park resources, the director may impose restriction on public activity and conduct and may limit the use of any area or facility in a state park or a portion thereof. It is an offense for a person to enter or remain in an area or participate in an activity so restricted by the director.

(b) An employee of the department, peace officers, and emergency personnel are exempt from this subchapter [~~chapter~~] when this subchapter [~~chapter~~] conflicts with the discharge of his or her [~~their~~] official duties to the extent of that conflict.

(c) The director by written order may waive any provision of this subchapter in response to a natural disaster or other similar emergency.

(d) [~~(c)~~] Any vehicle, boat, trailer, or other property found parked, stored, or left in a state park in violation of any law or rule may be removed and stored at the owner's expense.

(e) [~~(d)~~] No person may enter a state park with an equine or equines, or cause the entry of an equine or equines to a state park, unless that person has in his or her [~~their~~] immediate possession, for each equine in the person's custody or equine that the person allowed to enter the state park, a completed VS Form 10-11 (Texas Animal Health Commission) showing that the equine has tested negative to an official Equine Infectious Anemia test within the previous 12 months. The documentation required by this subsection shall be made available for inspection upon the request of any department employee acting within the scope of official duties.

§59.133. Closing Hours and Overnight Use.

(a) The director by written order may establish closing hours and opening hours for a state park or a portion of a state park. Closing hours or opening hours shall be posted.

(b) Except for persons [~~duly~~] authorized by the department to use a camping facility, trailer space, shelter, cabin or lodge facilities, or boat ramp, or for persons who have paid the overnight activity use fee, it is an offense for a person to enter into or remain within a state park between the closing hour and the opening hour.

§59.134. Rules of Conduct in Parks.

(a) Abandoned and unattended property. It is an offense for any person to:

(1) abandon a vehicle or other personal property;

(2) leave a vehicle, boat, barge, or other property unattended in a unit of the state park system in such a manner as to create a hazardous or unsafe condition; or

(3) leave property unattended in a state park without having received prior permission from the director or to leave a vehicle unattended after the closing hour, unless such person is legally in the park after closing, and unless he has parked the vehicle in a place designated by the director or he has prior permission from the director.

(b) Alcoholic beverages. It is an offense for any person to:

(1) consume or display an alcoholic beverage in a public place; or

(2) sell alcoholic beverages within a state park.

(c) Animals. Except as provided in this subsection, it is an offense for any person to bring into a state park, possess while in a state park, or release into a state park any species of animal. A pet or equine may be brought into and possessed within a state park as provided in this subsection.

(1) Equine. It is an offense for any person to:

(A) ride, drive, lead, or keep equines, except in designated areas;

(B) ride equines in a manner that is dangerous to a person or animal;

(C) allow equines to stand unattended or insecurely tied; or

(D) hitch equines to a tree, shrub, or structure in any manner that may cause damage.

(2) Pets. It is an offense for any person to:

(A) bring into, possess, or permit to roam within a state park a pet, unless the pet is secured by a leash not exceeding six feet in length, confined in a vehicle, or confined in a suitable cage;

(B) bring into or possess within a state park an unattended pet;

(C) fail to immediately collect and properly dispose of fecal material deposited by a pet for which a person is responsible. For purposes of this paragraph, "properly dispose" means to deposit fecal material in an appropriate solid waste collection container;

(D) bring a pet into an area where pets are prohibited;

(E) permit a pet (except a trained assistance animal accompanying a person with a disability) to enter into or remain in any building or enclosure designated for public use including, but not limited to, a restaurant, snack bar, cabin, lodge room, restroom, park store, shelter, refectory building, amphitheater, administration building, or railroad coach;

(F) permit a pet in the water of a designated swimming area or to permit a pet animal (except a trained assistance animal accompanying a person with a disability) within the land or beach area adjacent to the water of a designated swimming area; or

(G) possess a noisy, vicious, or dangerous pet, or a pet which creates a disturbance to or hazard within a state park;

(3) Wildlife. It is an offense for any person to:

(A) harm, harass, disturb, trap, confine, catch, possess, or remove any wildlife, or portions of wildlife from a unit of the state park system, except by a permit issued by the director or as provided by the Parks and Wildlife Code, Chapter 62, Subchapter D;

(B) release any fish into the waters of any state park, except as authorized by the Parks and Wildlife Code; or

(C) feed or offer food to any wildlife or exotic wildlife, or to leave food unsecured in a manner that makes the food available to wildlife or exotic wildlife, unless specifically authorized by the department. The feeding of birds may be permitted on a park-by-park basis as prescribed by the department.

(d) Arms and Firearms. It is an offense for any person to display or discharge an arm or firearm in a state park, unless:

(1) the person is participating in a public hunting activity within the state park that has been authorized by written order of the director so long as the person is in compliance with the applicable public hunting rules and regulations; or

(2) the person has been authorized by written order of the director.

(e) Closed Area. It is an offense for any person to:

(1) prevent or interfere with development, construction, or management of a state park; or

(2) enter or remain in an area of a state park that has been closed by the director for any reason, including security, safety, preservation, or restoration.

(f) Entrance and User Fees: It is an offense for any person to enter, use, or occupy a facility in any portion of a state park for which a fee has been established, unless the person has first paid the fee or satisfied the requirements of the fee, has received an entrance/use permit issued by the department, and has attached the permit to their vehicle as and when required by the permit. If the office is closed, payment must be made according to posted instructions or signage.

(g) Facilities Use. It is an offense for any person to:

(1) use an area or facility for any purpose contrary to its designated purpose; or

(2) keep, use, or arrange a motor vehicle, trailer, camping, or other equipment except as specified by the director. All vehicles and trailers are restricted to designated roads and parking areas, unless otherwise specified by permit;

(3) enter into, or remain in, an area or facility for which a public use limit has been established when such action will have the effect of exceeding the established limitations;

(4) exceed the public use limit establishing a maximum number of persons and, if appropriate, the number and type of motor vehicles, trailers, and equipment permitted to enter into, or remain in, a designated area or facility at any time;

(5) continue to occupy a facility past check-out time when a check-out time has been established by the director; or

(6) engage in camping except as authorized by permit in areas designated or marked for that purpose.

(h) Fires, Firewood, Smoking and Fireworks. Portable gas-fueled camp stoves may be used in designated campsites or picnic areas; however, it is an offense for any person to:

(1) light, build, or maintain a fire within a state park except in a facility or device provided, maintained, or designated for such purposes or to smoke or build fires when an extreme fire hazard has been posted by the department or a burn ban has been instituted by local government ordinance;

(2) gather firewood except when authorized by permit;

(3) leave a fire unattended; or

(4) possess within a state park any fireworks, explosives, or similar devices capable of explosion, or to discharge, set off, or cause to be discharged in or into a state park any such device or substance, except with written authorization from the director.

(i) Metal detector. It is an offense for any person to operate or use a metal detector, except as authorized by permit.

(j) Minors and children.

(1) A person younger than 15 years who enters a state park, must be supervised by a parent, legal guardian, or other responsible adult over the age of 17 years at all times.

(2) A person older than 15 years, but younger than 17 years may not enter or remain in a state park during overnight hours unless:

(A) the person is supervised by a parent, legal guardian or other responsible person over the age of 17 years;

(B) the person furnishes written consent of a parent or legal guardian to park personnel at the state park headquarters. For purposes of this subsection, written consent consists of a statement from a parent or legal guardian authorizing the person to enter the park and stating the full name, residence address, and telephone number of the parent or legal guardian; or

(C) the person is legally married.

(3) For purposes of this subsection, a person who is required by this subsection to be supervised and is part of a group will be considered supervised by a parent, legal guardian or other responsible person if there is at least one supervising adult over the age of 17 years for every 15 persons for whom supervision is required by this subsection.

(4) For purposes of this subsection, "overnight hours" is the time between a state park's closing time and opening time.

(5) It is an offense for a parent, legal guardian or other responsible person charged with supervision of a person under 17 years of age to permit the person under 17 years of age to violate a regulation contained in this subchapter.

(k) Motor Vehicle Use, Possession and Operation.

(1) Operation. It is an offense for any person to:

(A) operate a motor vehicle in a state park except on roads, driveways, parking areas, and areas designated as open for motor vehicle use;

(B) operate a motor vehicle in a state park if the motor vehicle is not licensed and inspected as required by the Texas Transportation Code or other law regarding the operation of motor vehicles, except as specifically authorized by permit; or

(C) operate a motor vehicle in a state park in a manner not authorized by the Texas Transportation Code or other laws regarding the operation of motor vehicles.

(2) Parking. It is an offense for any person to:

(A) park a motor vehicle or trailer in a state park except in areas designed, constructed, or designated for that purpose; or

(B) park, store, or leave a motor vehicle or trailer in violation of this section when signs have been posted in the affected areas.

(3) Speed Limit. It is an offense for any person to drive a motor vehicle within a state park at a speed:

(A) greater than is reasonable or prudent, having due regard for the traffic and the road conditions then existing;

(B) that endangers the safety of persons or property; or

(C) that exceeds the posted speed limit in any portion of the state park system.

(4) Traffic. It is an offense for any person to:

(A) operate a motor vehicle in a state park between the park closing hour and 6 a.m. opening hour, except for emergency or necessary purposes; or

(B) operate a motor vehicle in an indiscriminate or unnecessary manner (cruising).

(5) Trail use. It is an offense for any person to operate or use a motor vehicle or a bicycle on an unpaved road, trail, or path not designated and posted for use by such a motor vehicle or bicycle or use the trail in a manner that is dangerous to a person or animal.

(l) Natural and Cultural Resources.

(1) Plant life. It is an offense for any person to willfully mutilate, injure, destroy, pick, cut, remove, or introduce any plant life except by permit issued by the director.

(2) Geological features. It is an offense for any person to take, remove, destroy, deface, tamper with, or disturb any rock, earth, soil, gem, mineral, fossil, or other geological deposit except by permit issued by the director.

(3) Cultural resources. It is an offense for any person to take, remove, destroy, deface, tamper with, disturb, or otherwise adversely impact any prehistoric or historic resource, including but not limited to, buildings, structures, cultural features, rock art, or artifacts, except by written order of the director.

(m) Peace and quiet. It is an offense for any person to:

(1) disturb other persons in sleeping quarters or in campgrounds between the hours of 10 p.m. and 6 a.m.;

(2) cause, create, or contribute to any noise which is broadcast, or caused to be broadcast, into sleeping quarters or campgrounds, or which emits sound beyond the person's immediate campsite, between the hours of 10 p.m. and 6 a.m., whether by shouting or singing, by using a radio, phonograph, television, or musical instrument, or by operating mechanical or electronic equipment;

(3) use electronic equipment, including electrical speakers, at a volume which emits sound beyond the immediate individual camp or picnic site at any time without specific permission of the director; or

(4) create a disturbance capable of negatively affecting other park users by causing excessive noise by any means. Specific allowable noise levels for specific parks or parts of parks may be established by written order of the director.

(n) Public Nudity. It is an offense for any person to disrobe or appear nude in public. Females are considered to be disrobed when

their breasts below the top of the areola are exposed except when nursing a baby.

(o) Soliciting. It is an offense for any person to solicit funds or donation of any item, or offer to sell any goods, wares, merchandise, liquid, or edibles, or render any service for hire, or distribute written material, in a state park, except by authority of a concession agreement approved by the director.

(p) Water Recreation. It is an offense for any person to:

(1) engage in water skiing, surf boarding while being towed, towing a person or a similar device, or operate a motorized ski device on lakes of less than 650 surface acres located in a state park;

(2) enter water or swim in an area closed for that activity;

(3) swim at night unless otherwise posted;

(4) introduce, carry into, or possess, use, break, dispose of, throw, or abandon any glass container in the water of a swimming area, swimming pool, or in the beach area adjacent to the water of a swimming area;

(5) moor, dock, or berth a boat or any other object between the hours of 10 p.m. and 6 a.m., except in mooring areas designated by the director; or

(6) moor, dock, or berth a commercial vessel at any part of a state park except by permit from the director.

(q) Water, Wastewater, Sewage, and Garbage. It is an offense for any person to:

(1) deposit waste water, sewage, or effluent from sinks, toilets, or other plumbing fixtures directly on the ground or into the water;

(2) use any water fountain, drinking fountain, pool, sprinkler, reservoir, lake or any other water body contained in the park for bathing, laundering, and washing dishes, pets, or vehicles;

(3) deposit fish parts at any location except park fish cleaning facilities;

(4) discard, deposit, or dump garbage in a state park, except for:

(A) garbage generated inside the park during the course of park visitation; or

(B) an amount of garbage consistent with what ordinarily would accumulate in a vehicle in the course of a day's travel;

(5) dispose of garbage except in a receptacle provided for that use or as may otherwise be specifically authorized by department personnel; or

(6) use water provided by the state park for purposes other than drinking, washing or culinary uses.

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

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31 TAC §59.134

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of Parks and Wildlife Code, §13.001, which requires the commission to establish a classification system for state parks; natural areas, or historical sites and to adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites; §13.011, which authorizes the commission to adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites; §13.101 and §13.102, which authorizes the commission to promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts; and §13.0145, which authorizes the commission to enforce speed limits.

The proposed repeal affects Parks and Wildlife Code, Chapter 13.

§59.134. Rules of Conduct in Parks.

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

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department (the department or TPWD) proposes the repeal of §65.42, amendments to §§65.3, 65.10, 65.56, 65.64, 65.72, and 65.73, and new §65.42, concerning the Statewide Hunting and Fishing Proclamation.

The proposed repeal of §65.42 is necessary because the department is making comprehensive changes to regulations as part of a new approach to deer management.

The proposed amendment to §65.3, concerning Definitions, would add definitions for "paddle craft" and "paddle-craft fishing guide" because the proposed amendment to §65.73, concerning Fishing Guide License-Required Documentation, would create a fishing guide license for persons using paddle craft, but not motorized boats.

The proposed amendment to §65.10, concerning Possession of Wildlife Resources, would modify the current tagging requirements for deer and antelope. Under Parks and Wildlife Code,

§42.018, a deer or antelope carcass must remain tagged until it reaches a final destination and is finally processed, unless modified by commission rule. Parks and Wildlife Code, §42.001 defines "carcass" as "the body of a dead deer or antelope . . . that has not been processed more than by quartering;" "final destination" as a person's permanent residence or a cold storage or processing facility; "final processing" as the processing of a carcass more than by quartering; and "quartering" as "the processing of an animal into not more than two hindquarters each having the leg bone attached to the hock and two forequarters each having the leg portion to the knee attached to the shoulder blade. The term also includes removal of two back straps and trimmings from the neck and rib cage."

The department has become aware that the practice of freezing an entire bone-in quarter for later consumption is technically problematic, because under the current law, tagging requirements remain in effect until the carcass has been processed "beyond quartering," which means, among other things, the removal of bones. Therefore, a quarter with the bone still in it must remain tagged. In order to remedy this anomaly, the proposed amendment would modify the statutory tagging requirements to provide that the tagging requirements for a carcass cease when the carcass is at a final destination, has been skinned, and has had at least one hindquarter or forequarter completely removed. Under Parks and Wildlife Code, §42.0177, the commission may modify or eliminate the tagging requirements established in Parks and Wildlife Code, §42.018.

Proposed new §65.42, concerning Deer, would establish the open seasons, bag limits, and special provisions for the take of white-tailed and mule deer in Texas. The proposed new section reflects a new approach to deer management being introduced by the department. Until recently, the department collected biological information regarding white-tailed deer populations and harvest by regulatory compartment, typically a group of counties in geographical proximity to each other. The regulatory compartment concept was used for many years and was adequate to analyze deer population dynamics within the boundaries of counties; however, that approach contributed to highly variable population estimates, which affected the department's ability to detect changes within a deer population. As a result of the department's comprehensive science review in 2005, Wildlife Division staff developed an entirely new approach to data collection for white-tailed deer, defining specific areas (known as Resource Management Units (RMU)) that share similar soil types, vegetative communities, wildlife ecology, and land-use practices. The intent is to develop deer seasons, bag limits, and special provisions that allow the department to monitor the efficacy of management strategies on deer populations within each RMU. The proposed rules will still use the familiar system of county boundaries and major highways to delineate various regulatory regimes. The proposed new rule is intended to provide additional hunting opportunity where possible within the tenets of sound biological management, address resource concerns such as increasing deer densities, habitat degradation, and poor age structure among bucks, and simplify existing regulations.

The proposed new section retains certain provisions that are identical to those contained in the current rule. With respect to white-tailed deer, those provisions are the existing lengths of the general open season and the archery-only open season, provisions governing the use of Managed Lands Deer Permits and Landowner Assisted Management Permits, provisions stating exceptions to the county and aggregate bag limits when certain tags or permits are used, provisions governing the definition of lawful bucks in counties where the "antler restriction" rule is implemented, and provisions governing the take of deer during Special Late Antlerless and Spike-buck Deer seasons. The counties listed in proposed new subsection (b)(1) retain the same provisions contained in current subsection (b)(1), with the exception of Atascosa County, which is addressed elsewhere in this preamble. The proposed provisions governing the take of mule deer are identical to those contained in current §65.42(c).

Changes to buck bag limits

Under current regulations there are 85 one-buck counties in Texas. Historically, one-buck counties were areas where hunting pressure had been so intense that bucks could not attain maturity or where deer densities were so low that buck age structure could be affected by very little hunting pressure. The department has determined that the one-buck bag limit approach did not significantly reduce hunting pressure on bucks in counties where tract sizes are relatively small and hunter density is relatively high, primarily in the eastern half of the state (e.g., Pineywoods, Post Oak Savannah, and Cross Timbers and Prairies ecoregions). Therefore, an alternative buck-harvest strategy was necessary in those areas in order to improve buck age structure. The recent implementation of the "antler-restriction rule" in many of those counties has produced age structures that are desirable.

Based on data obtained from 61 counties where the "antler-restriction rule" has been implemented, the department is satisfied that the "antler-restriction rule" has been quite effective at improving buck age structure while maintaining ample hunting opportunity. Therefore, the proposed new rule would implement the "antler-restriction rule" in 52 additional counties where yearling and 2.5-year-old bucks comprise from 55 - 68% of the total buck harvest. For the first time, the "antler-restriction rule" will be implemented in counties where, under current rule, more than one buck is allowed to be taken. All counties in which this harvest strategy is implemented will have a two-buck bag limit. The affected counties are Anderson, Angelina, Archer, Atascosa, Brazos, Brown, Chambers, Clay, Cooke, Denton, Ellis, Falls, Freestone, Grayson, Grimes, Hardin, Harris, Henderson, Hill, Hood, Hunt, Jack, Jasper, Jefferson, Johnson, Kaufman, Liberty, Limestone, Madison, McLennan, Milam, Mills, Montague, Montgomery, Navarro, Newton, Orange, Palo Pinto, Parker, Polk, Robertson, San Jacinto, Smith, Stephens, Tarrant, Trinity, Tyler, Van Zandt, Walker, Wichita, Wise, and Young.

In the eastern Rolling Plains, relatively large tract sizes and light hunter density have allowed the deer population to expand as habitat has become more favorable to white-tailed deer. Buck age structure in this area is comparable to that in areas where the antler-restriction rule has been implemented, and staff have determined that buck populations in the eastern Rolling Plains can withstand an additional buck in the bag with no restrictions. Therefore, the proposed new rule would implement a buck bag limit of two bucks in Baylor, Callahan, Haskell, Jones, Knox, Shackelford, Taylor, Throckmorton, and Wilbarger counties.

Changes to antlerless bag limits

There are three different antlerless-deer bag limits in Texas: a two-antlerless bag in all counties north and east of the Edwards Plateau; a five-antlerless bag in south Texas and the majority of the Edwards Plateau; and a four-antlerless bag in the Trans Pecos ecoregion. The current approach contains a mix of harvest strategies in each of several RMUs, making it

very difficult for the department to evaluate a deer population's response to any particular harvest strategy. Furthermore, there are RMUs where the two-antlerless bag is insufficient to adequately manage increasing deer populations and deteriorating habitat. Therefore, the proposed new rule would implement more liberal antlerless-deer bag limits in the eastern Trans Pecos and Rolling Plains, and in portions of the Cross Timbers and Prairies ecoregion.

White-tailed deer densities throughout the eastern Trans Pecos are very similar to densities in Edwards Plateau RMUs to the east. The proposed new rule would increase the bag limit from four antlerless deer to five antlerless deer in Pecos, Terrell, and Upton counties in an effort to increase hunting opportunity and address resource concerns.

White-tailed deer densities have remained relatively stable in much of the Cross Timbers. The department believes that increasing the antlerless-deer bag limit in this region will increase total deer harvest, which is imperative for habitat recovery. Therefore, the proposed new rule would increase the antlerless deer bag limit from two antlerless deer to five antlerless deer in Archer, Baylor, Bell (west of IH35), Bosque, Callahan, Clay, Coryell, Hamilton, Haskell, Hill, Jack, Jones, Knox, Lampasas, McLennan, Palo Pinto, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Williamson (west of IH35), and Young counties.

Although white-tailed deer densities in the western Rolling Plains and eastern Panhandle are highly variable, there are areas containing suitable habitat that have become saturated with deer, and whitetails are expanding into marginal to poor habitat. Browsing pressure in these areas is severe, where little woody vegetation exists within five feet of the ground. Therefore, the proposed new rule would increase the antlerless bag limit from two antlerless deer to five antlerless deer in Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties.

Antlerless deer harvest in many counties has been controlled by what are popularly known as "doe days," the designation of specific time periods when antlerless deer may be harvested without a permit. The current rules allow for four specific regimes: four "doe days," 16 "doe days," and "doe days" from the beginning of the season until the Sunday following Thanksgiving. Additionally, there are counties where the harvest of antlerless deer is strictly by permit only. As is the case in other parts of the state, the introduction of the RMU concept means that current harvest regimes are not consistent across RMUs. Therefore, the proposed new rule would eliminate "doe days" (i.e., allow antlerless harvest without permits for the entirety of the general season) in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties (which currently allow antlerless harvest by permit only), Denton and Tarrant counties (which currently have 16 "doe days") and in Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties (which currently have 23-plus "doe days"). Staff believes that the proposed new rule would offer additional hunting opportunity in areas where increased antlerless harvest is desirable, as well as provide a consistent time period during which antlerless deer may be harvested. Similarly, the proposed new rule would increase the number of "doe days" in Bowie and Rusk counties (from 4 to 16), in Cherokee and Houston counties (from 4 to 23-plus), and in Anderson, Henderson, Hunt, Leon, Rains, Smith, and Van Zandt counties (from no "doe days" to four).

The proposed new rule would allow antlerless harvest only by permit in Grayson County. Grayson County currently has a three-deer bag limit, not more than one of which may be a buck, not more than two of which may be antlerless, and four "doe days". As previously mentioned, the proposed new rule would implement the antler-restriction rule in Grayson County, which would increase the buck bag limit to two.

The proposed new rule also would implement an open season in Dawson, Deaf Smith, and Martin counties, which currently have a closed season. The white-tailed deer population and distribution has increased in portions of these counties to the extent that a season is justifiable. The proposed new rule would create a season opening the first Saturday in November and running through the first Saturday in January, full-season either-sex, with a three-deer bag limit (no more than one buck and no more than two antlerless). Opening the season and allowing full season either-sex harvest will increase hunting opportunity, allow landowners and managers more flexibility in their white-tailed deer management decisions, and will not adversely affect the resource.

Special Late Seasons

In an attempt to meet the general objectives for deer management mentioned earlier, and to standardize the length of all late seasons, the proposed new rule would expand the current late antlerless and spike season into 67 additional counties and expand the muzzleloader season into 37 additional counties. In Pecos, Terrell, and Upton counties, the current muzzleloader season would be replaced by a general late season for antlerless and spike buck deer.

The proposed new rule would create a 14-day late antlerless and spike deer season in Archer, Armstrong, Baylor, Bell (West of IH35), Borden, Bosque, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Denton, Dickens, Donley, Eastland, Erath, Fisher, Floyd, Foard, Garza, Gray, Hall, Hamilton, Hardeman, Haskell, Hemphill, Hill, Hood, Hutchinson, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Pecos, Roberts, Scurry, Shackelford, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terrell, Throckmorton, Upton, Wheeler, Wichita, Wilbarger, Williamson (West of IH35), Wise, and Young counties. In Pecos, Terrell, and Upton counties, the late antlerless and spike season would replace the current muzzleloader-only open season.

The current muzzleloader-only open season is a nine-day late season during which antlerless and spike deer may be taken only by muzzleloading firearms. The proposed new rule would expand the muzzleloader season from nine to 14 days in all muzzleloader counties, make it run concurrently with all other late seasons, allow for the bag composition to be identical to that of the general season, and would expand it to include Austin, Bastrop, Bowie, Brazoria, Caldwell, Camp, Cass, Cherokee, Colorado, De Witt, Fayette, Fort Bend, Goliad, Gonzales, Gregg, Guadalupe, Harrison, Houston, Jackson, Karnes, Lavaca, Lee, Marion, Matagorda, Morris, Nacogdoches, Panola, Rusk, Sabine, San Augustine, Shelby, Upshur, Victoria, Waller, Washington, Wharton, and Wilson counties.

The proposed new rule also would expand the late youth-only season from two days to 14 days and make it run concurrently with the special late antlerless and spike deer and special muzzleloader seasons. The proposed expansion is intended to cre-

ate additional opportunity for parents and children to hunt together during January.

Special Provisions

Under current rule, antlerless deer may not be harvested on United States Forest Service (USFS) lands without an antlerless permit, regardless of the season and bag limit established for county. This is also true of U.S. Army Corps of Engineers lands and lands owned by river authorities. USFS personnel have requested that the permit requirement be removed in specific areas, allowing hunters to be governed by the county regulations, including the utilization of "doe days." Therefore, the proposed new rule would create special provisions for USFS properties in Montague and Wise counties, where the deer populations should not be adversely impacted with a regulation allowing an unknown number of hunters the opportunity to harvest antlerless deer without a permit from Thanksgiving Day through the Sunday immediately following Thanksgiving. USFS personnel also have requested that the county regulations for Fannin County apply to USFS lands in Fannin County. Therefore, the proposed new rule also would allow for the harvest of antlerless deer without a permit on USFS lands in Fannin County during the four "doe days" established in that county.

Proposed new §65.42 also would implement a 9-day, buck-only general season for mule deer in Parmer County. Under current rule, there is no open season for mule deer in Parmer County, where population surveys have revealed low numbers of mule deer within pockets of suitable habitat. The literature suggests that the implementation of a buck-only season will not have any measurable impact on herd productivity or expansion; however, a measurable change in the age structure of bucks is possible as a result of harvest pressure on a previously unhunted population. Implementation of the proposal is expected to result in increased hunter opportunity with no measurable effect on reproduction or distribution of mule deer populations.

The proposed amendment to §65.56, concerning Lesser Prairie Chicken: Open Season, Bag, and Possession Limits, would close the season for lesser prairie chicken until the population recovers to a more sustainable level. The lesser prairie chicken population is in decline across its historic range due to habitat loss and habitat degradation. According to some estimates, the total population declined by over 75% between 1963 and 1980. The proposed amendment is necessary because although lesser prairie chicken hunting mortality in Texas is almost nonexistent, closure of the season is a reasonable component of any long-term recovery strategy.

The proposed amendment to §65.64, concerning Turkey, would correct an inaccurate cross-reference in subsection (b)(4).

The proposed amendment to §65.72, concerning Fish, consists of several components.

Harvest regulations for blue catfish on Lake Lewisville (Denton County), Lake Richland Chambers (Navarro and Freestone Counties), and Lake Waco (McLennan County) currently consist of a 12-inch minimum length limit and 25-fish daily bag limit. The proposed amendment to §65.72 would retain the 25-fish daily bag limit but implement a 30- to 45-inch slot length limit and allow the harvest of only one blue catfish over 45 inches. No harvest of blue catfish between 30 and 45 inches would be allowed. The proposed amendment is necessary because harvest data indicate an extremely high harvest of older fish, which could have negative impacts on population abundance by affecting spawning and reproduction.

Harvest regulations for largemouth bass on Lake Ray Roberts (Cooke, Denton, and Grayson Counties) currently consist of a 14- to 24-inch slot length limit and a five-fish daily bag (only one bass 24 inches or greater may be retained each day). The proposed amendment would implement a 14-inch minimum length limit and retain the five-fish daily bag limit (the standard statewide regulation). The current regulation was implemented in 1998 in an attempt to explore the feasibility of creating a trophy bass population; however, population structure trend data indicate that the population has not responded to the slot limit, so the department has determined that the rules should revert to the statewide standard.

Alligator Gar

Under current regulations, there are no restrictions on the harvest of alligator gar in Texas. Alligator gar populations are believed to be declining throughout much of their historical range in North America, which includes the Mississippi River system as well as the coastal rivers of the Gulf of Mexico from Florida to northern Mexico. Although the specific severity of these declines is unknown, habitat alteration and over-exploitation are thought to be partially responsible. Alligator gar have been extirpated in Illinois, Indiana, and Ohio and designated as a "Species of Concern" in Oklahoma and Kentucky. In addition, the Endangered Fishes Committee of the American Fisheries Society has listed the alligator gar as "Vulnerable." Observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. The proposed amendment would impose a daily bag limit of one alligator gar per person. The change is intended to protect adult fish while allowing limited harvest, which would ensure population stability while allowing utilization of the resource.

The proposed amendment to §65.72 would also affect regulations for alligator gar and blue catfish on Lake Texoma. Recent meetings between fisheries and law enforcement staff from TPWD and Oklahoma Department of Wildlife Conservation (ODWC) resulted in two proposed changes to fishing regulations on Lake Texoma. The proposals are part of an ongoing effort to standardize regulations on a reservoir where management is shared by both states. For reasons discussed earlier, the department is concerned about the status of alligator gar. This concern is shared by biologists with the ODWC. There are currently no restrictions on the take of alligator gar on the Texas portion of Lake Texoma. The proposed amendment would institute a daily bag limit of one alligator gar and prohibit the take of alligator gar in a portion of the lake that under certain environmental conditions could function as spawning grounds for large quantities of alligator gar. Under these conditions, alligator gar are extremely vulnerable to harvest, and because the conditions for spawning do not exist on a regular or cyclical basis, alligator gar breed infrequently.

Blue Catfish

Current regulations for blue catfish allow a daily bag limit of 15 fish. Harvest data indicate an extremely high harvest of older fish, which could have negative impacts on population abundance. Therefore, the proposed amendment would retain the 15-fish daily bag limit but prohibit the retention of more than one blue catfish 30 inches or greater per day, which is expected to protect older and larger fish for breeding purposes.

The proposed amendment would also eliminate a time-dependent provision in §65.72(c)(5)(F) that is no longer necessary and comport that subparagraph accordingly. The commission last year prohibited the take of catfish by archery equipment, to be effective September 1, 2008. The proposed amendment would eliminate the reference to the date and remove references to the take of catfish by archery equipment.

Flounder

The proposed amendment to §65.72 would also affect provisions governing the recreational and commercial take of flounder. On the basis of pronounced downward trends in fishery independent data (bag seines, bay trawls, gill nets) which showed declines in catch-per-unit-effort (abundance), and declining commercial and recreational landings, the department has determined that measures must be implemented to protect and replenish spawning stock biomass in the fishery. Current harvest regulations for flounder consist of a 14-inch minimum size limit and a 10-fish daily bag and possession limit for recreational take and a 60-fish daily bag and possession limit for commercial take. The proposed amendment to §65.72 would implement a five-fish daily bag and possession limit for recreational take and a 30-fish commercial daily bag and possession limit for commercial take. Additionally, the proposed amendment would close Texas waters to the take of flounder by all anglers for the entire month of November.

In developing this proposal to address the downward trends, the department considered several alternatives, in addition to the current proposal. The department considered: (1) a five-fish recreational/30-fish commercial bag limit with no closure; (2) a November closure with no change to current bag limits; (3) a five-fish recreational/45-fish commercial bag limit with a November closure; (4) a five-fish recreational/40-fish commercial bag limit with a November closure; (5) a five-fish recreational/30-fish commercial bag limit with an October to December closure; and (6) an October to December closure with no change to bag limits. The department believes that a 30-fish commercial limit, a 5-fish recreational limit and a November closure would best balance competing interests in achieving the objective of the proposed amendment while being less burdensome to anglers. However, the department is also interested in receiving comments regarding the other alternatives considered in formulating a recommendation for the final rule.

Federal-State Managed Species

Several fish species are managed jointly by the department, the Gulf of Mexico Fishery Management Council (GMFMC) and the National Marine Fisheries Service (NMFS). As a result of the finalization by NMFS of the Highly Migratory Species Amendment 2, and Reef Fish Amendments 30A and 30B, the department is now seeking to achieve greater consistency with federal rules affecting greater amberjack, gag, gray triggerfish, and sharks. NMFS and GMFMC have determined that greater amberjack, gray triggerfish, gag grouper, and some species of sharks are in an overfished condition or are undergoing overfishing. The following proposed amendments to current bag and size limits for those species are intended to provide consistency with federal regulations, which is necessary to facilitate multi-jurisdictional law enforcement, to reduce confusion among anglers, and to achieve the population rebuilding goals set by NMFS and GMFMC.

Greater Amberjack

Current regulations for greater amberjack consist of a 32-inch minimum size limit and a 1-fish daily bag limit. The proposed amendment to §65.72 would implement a 34-inch minimum size limit. According to stock assessments, greater amberjack were found to be undergoing overfishing in 2006. Within the context of the amendment, a greater amberjack minimum size limit of 34 inches total length is consistent with federal guidelines and follows a previous rule made by the National Marine Fisheries Service on August 4, 2008. The changes for greater amberjack are in accordance with the suggested changes as published in Amendment 30A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico as published in the Federal Register on July 3, 2008 (73 Fed. Reg. 38139 - 38143).

Gray Triggerfish

Harvest of gray triggerfish in Texas waters is currently unregulated. The proposed amendment to §65.72 would implement a 20-fish daily bag limit, a 40-fish possession limit, and a 14-inch total length minimum size limit. According to stock assessments, gray triggerfish were found to be undergoing overfishing in 2006. Within the context of the amendment, a gray triggerfish minimum size limit of 14 inches total length and a daily bag limit of 20 fish are consistent with federal guidelines and follow a previous rule promulgated by the National Marine Fisheries Service, which became effective August 4, 2008.

Gag Grouper

Harvest of gag grouper in Texas waters is currently unregulated. The proposed amendment to §65.72 would implement a 22-inch minimum size limit and a two-fish daily bag limit. The changes for gag grouper are in accordance with the suggested changes as published in Amendment 30B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico as published in the Federal Register on October 28, 2008 (73 Fed. Reg. 63,932) and a similar interim rule as published in the Federal Register on December 2, 2008 (73 Fed. Reg. 73,192 that became effective on January 1, 2009). According to stock assessments, gag grouper were found to be undergoing overfishing in 2004. Within the context of the amendment, a gag grouper bag limit of two fish per person per day within an aggregate grouper quota is consistent with federal guidelines. To establish consistency between federal and state waters, the proposal would establish a two-fish bag limit. The proposal would also establish a 22-inch minimum size limit, which also tracks a previous federal rule change made by National Marine Fisheries Service in 2000.

Sharks

Current regulations for the take of sharks consist of a 24-inch minimum size limit (total length) with a one-fish daily bag limit. The proposed amendment to §65.72 would prohibit the catch or possession of the following sharks: Atlantic angel, basking, bigeye sand tiger, bigeye sixgill, bigeye thresher, bignose, Caribbean reef, Caribbean sharpnose, dusky, Galapagos, longfin mako, narrowtooth, night, sandbar, sand tiger, sevengill, silky, sixgill, smalltail, whale, and white. These sharks have been determined to be in an overfished condition or are undergoing overfishing. The proposed amendment retains the 24-inch minimum size limit for Atlantic sharpnose, blacktip and bonnethead sharks while increasing the minimum size limit for all other sharks, except those listed as prohibited. For the other species which are not prohibited, the minimum size limit would be increased from 24 inches to 64 inches (total length). The proposed length limits are consistent with the 54-inch fork

length established by Highly Migratory Species, Amendment 2, promulgated by NMFS.

Paddle-Craft License

The proposed amendment to §65.73, concerning Fishing Guide License-Required Documentation, would establish a distinction in requirements between fishing guides operating a motorized vessel and fishing guides operating from a non-motorized boat (i.e., "paddle craft"). It also would establish criteria under which paddle-craft fishing guides must qualify in order to obtain an "all-water paddle-craft fishing guide" license. Under current rule, all-water fishing guide licensing requirements are unsuited for prospective guides who fish exclusively from paddle craft. Currently, anyone wishing to purchase an all-water fishing guide license must provide proof that he or she possess a United States Coast Guard (USCG) Operator of an Uninspected Passenger Vessel license (OUPV), often referred to as a 6-pack license. To obtain an OUPV, the applicant is required to produce proof that he or she has 360 days of "sea time" in a power vessel. For operators of paddle craft, many of whom do not have access to a power boat, this can present a barrier to obtaining a license. In addition, unique safety issues associated with the operation of paddle craft are not currently addressed by USCG training and licensure standards. Paddlers are more susceptible to capsizing, exposure to the elements, and tides and currents than are power boaters. They are also less visible on the water than larger craft and, therefore, more susceptible to collisions. Creating separate licenses with different sets of requirements for operators of power craft and operators of paddle craft would create the opportunity for operators of paddle craft to obtain a guide license and would address critical safety issues. The proposed new paddle-craft fishing guide license would not allow someone to operate as a guide on any motorized craft. Additionally, it should be noted that a guide who has the all-water guide license under the current requirements will still be allowed to operate as a guide in either a motorized or a non-motorized craft without the necessity of obtaining a paddle-craft license.

Mr. Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic costs to persons required to comply with the rules as proposed, except as specifically discussed elsewhere in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that except for the provisions affecting the commercial harvest of fish and paddle craft used by fishing guides, the proposed rules will not directly affect small businesses and micro-businesses. Except for the commercial fishing and the paddle craft regulations, the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest fish and wildlife resources in this state. With exceptions as noted, the proposed amendments and new section would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or micro-businesses. Therefore, the economic impact statement and the regulatory flexibility analysis described in Government Code, Chapter 2006, are required only for the provisions affecting the commercial harvest of certain species of fish and the establishment of a paddle-craft guide license.

Alligator Gar

The department regulates commercial harvest of nongame fish by two mechanisms: an appropriate commercial fishing license (the general commercial fisherman's license or the commercial finfish fisherman's license) and the permit to sell nongame fish taken from public fresh water, if harvest is to occur in fresh water. Under Parks and Wildlife Code, Chapter 47, no person is allowed to remove aquatic products from the water of the state for pay, sale, barter, or exchange or any other commercial purpose unless that person possesses an appropriate commercial fishing license. Additionally, under 31 TAC §57.379, no person may sell or offer for sale a nongame fish taken from public fresh water unless that person possesses a permit to do so. Thus, all persons who engage in the commercial harvest of gar must obtain the appropriate commercial fishing license, but those who do so in fresh water are also required to obtain the permit to sell nongame fish taken from public water. The reporting requirements for the permit to take nongame fish from fresh water and the commercial fishing licenses are different. Harvest and sales reporting for the permit to take nongame fish from fresh water is done monthly by the permittee; harvest and sales reports for the commercial fishing licenses are submitted by the wholesale fish dealers who have purchased gar from the licensees. Due to this difference, there is not a single source of data to reflect gar landings; therefore, for the purposes of this analysis the department has treated all reported landings as additive. Although this means counting some data twice, it is the only way for the analysis to capture all landings and ensure that impacts to small and micro-businesses are not underestimated.

Department records indicate that a total of 29 persons engaged in the commercial harvest of alligator gar in 2007 and a total of 20 engaged in the commercial harvest of alligator gar in 2008. The department has determined that all persons engaged in the commercial harvest of alligator gar in Texas qualify as small or micro-businesses (29 businesses in 2007 and 20 in 2008). The department has also determined that if the rule as proposed

is adopted, the adverse economic impacts for small and micro-businesses will be in the form of either lost sales or the cost of additional effort in the fishery to compensate for the fact that only one alligator gar per day may be taken.

Data submitted to the department in 2007 by the 29 commercial licensees reported sales of alligator gar from $0 to $44,303, although most reported sales of less than $5,000. Similarly, data submitted to the department in 2008 by the 20 commercial licensees indicate sales from alligator gar of $0 to $85,950, although again most reported sales of less than $5,000.

The average annual value of commercial alligator gar sales reported by the 29 commercial licensees in 2007 and the 20 licensees in 2008 is $6,999.92. Therefore, the probable adverse economic impacts to small and micro-businesses as a result of the proposed rules would be an average loss in sales of $6,999.92 per business per year. The average value of the two highest sales figures reported in 2007 and 2008 was $65,126.57. Therefore, the single largest loss in sales as a result of the proposed rule would likely be $65,126.57, although a potential loss of up to $85,950 is possible. The analysis assumes a cessation of fishing activity. The adverse economic impact to permittees who continue to fish under the bag limit of one alligator gar per day would be less.

The department considered several alternatives to the proposed rule, including a minimum length limit, a special tag, and the closure of commercial harvest. The minimum length limit alternative was rejected because the department was concerned that recreational anglers, many of whom use archery equipment (which is lethal), would have difficulty distinguishing the length of a fish and take undersize fish by accident. The special tag alternative was rejected because this option represented the most conservative reduction in recreational harvest. The current proposal of one fish per day was determined to be an adequate initial step in managing alligator gar populations. Although populations in Texas are considered to be healthy, they are vulnerable to over-harvest and habitat loss. From existing data, the department knows that alligator gar live more than 50 years, spawn on an irregular basis, do not mature until they are 10 - 15 years old, and have low natural mortality. The closure of commercial harvest was slightly modified to allow the harvest of one fish per day, which will essentially function as a complete closure. The department finds that there is no reasonable alternative that would be as or more effective in achieving the objective of the proposed amendment while being less burdensome to small and micro-businesses.

Shark

The rules as proposed for sharks will impact the commercial fishery for sharks along the Texas coast. The proposal would prohibit the catch or possession of some species of shark, retain the 24-inch minimum size limit on some species of shark, and increase the minimum size limit on some species of shark from 24 to 64 inches (total length). The proposal would retain the one-fish daily bag and possession limit for species of shark for which catch and possession would be allowed under the proposal. Based on permit data from 2007-08, the department has determined that all persons who take shark for commercial purposes in Texas qualify as micro-businesses. Within Texas state waters under current rules, the daily bag limit for both commercial and recreational take of shark is one shark per day. Thus, while there may be an occasional commercial take of shark in Texas waters, the current bag limit of one fish per person per day has kept the total commercial value of sharks at a minimal level.

Although the department does not believe that the rule as proposed for sharks will have a significant impact on small or micro-businesses as a result of catching and landing sharks from Texas state waters, for purposes of analyzing the impact of the proposed rule on small and micro-businesses, the department is assuming the scenario that would have the greatest impact. There were 13 individuals who reported landing sharks in 2007, and three individuals in 2008. Therefore, the proposal regarding sharks would impact between three and 13 small or micro-businesses.

Based on trip-ticket reporting, the total poundage of shark landings in 2007 was 4,601 lbs. In 2008 it was 482 lbs. Landings in Texas include landings from Texas state waters as well as federal waters. While it is unlikely the entire contents of the landings reported in 2007 and 2008 would be prohibited under the proposal, as noted above, for purposes of determining the impact to small and micro-businesses, the department is assuming the scenario that would result in the greatest impact. Therefore, the average value of the catch would be a measure of the potential impact to small and micro-businesses.

The dollar value of the catch was $4,212 in 2007 and $285 in 2008. The department assumes that most of the catch occurred in federal waters and then was landed in Texas. Assuming the entire catch would be prohibited under the proposal, the total loss in sales to all small and micro-businesses under the rule as proposed would be no greater than $4,212. There were 13 individuals who reported landing sharks in 2007, thus if 2007 data is used, the average loss per individual under the rule as proposed would be $324. In 2008 there were three people who reported landings, so if 2008 data is used, the average loss under the rule as proposed would be $95. Using the average impacts for 2007 and 2008, the department, therefore, estimates the rule as proposed would result in an average loss in sales of $209.50 per small or micro-business affected by the rule, again assuming all previously reported catch would be prohibited by the proposal.

The department considered several alternatives to the proposed rule, including leaving the current rules in place and closing Texas waters to the harvest of certain sharks. The alternative of leaving the current rules in place was rejected, primarily because it would not accomplish the goal of the rule, which is to be consistent with federal rules designed to reduce overfishing, but also because maintaining current rules would create confusion for recreational anglers with respect to differential bag limits in state and federal waters and because differential bag limits could cause difficulties in enforcement activities. The alternative of closing Texas waters was rejected because although it would undoubtedly result in stopping overfishing, it would impose an unnecessary hardship on recreational and commercial anglers. While the department shares concerns with respect to shark populations, the federal rules do not recognize the Texas beachfront fishery and the department does not believe that full consistency with federal rules on sharks is warranted at this time.

Greater Amberjack

Based on permit data from 2007-08, the department has determined that all persons who take greater amberjack for commercial purposes in Texas qualify as micro-businesses. The proposed amendment to §65.72 would retain the one-fish daily bag limit, but increase the minimum size limit from a 32-inch to a

34-inch minimum size limit. Because greater amberjack is currently managed under a one-fish bag limit per person per day, it is assumed that most, if not all, of the catch occurs outside of Texas state waters, and is therefore subject to federal restrictions rather than state rules. Although the increase in the minimum size limit, when combined with the federal regulations, is believed to help protect the fishery from over-harvest, the primary impact of the rule will be to assist in the enforcement of the federal limits. As a result, the department does not believe that the rule as proposed for greater amberjack will have an impact on small or micro-businesses.

Gag Grouper

Based on permit data from 2007 and 2008, the department has determined that all persons who take gag grouper for commercial purposes in Texas qualify as micro-businesses. Until now, there have been no regulations governing the take of gag grouper in Texas waters. The proposal would implement a 22-inch minimum size limit and a two-fish daily bag limit for gag grouper. Under federal rules, the commercial gag grouper fishery in federal waters is managed by a commercial quota and trip limits. When the quota is reached, the season is closed in federal waters.

The department believes that most grouper landed in Texas are actually harvested in federal waters, and are therefore subject to federal restrictions rather than state rules. As a result, the department does not believe that the rule as proposed will have a significant impact on small or micro-businesses catching and landing gag grouper fish from Texas state waters. However, in order to analyze the proposed rule's potential impact on small and micro-businesses, the department assumes the scenario that would have the greatest impact since the landings are not separated by whether they were caught in federal or state waters. The scenario with the greatest impact assumes all of the landings were taken from state waters. There were 12 persons in 2007 who reported landing gag grouper and in 2008, there were four persons who reported gag grouper landings. Therefore, the proposal regarding gag grouper would impact between four and 12 small or micro-businesses.

Gag grouper landings in Texas in 2007 consisted of a total of 1,116 lbs. of fish landed at a dollar value of $3,977. In 2008, the total was 1,528 lbs. landed at a dollar value of $1,526. While it is unlikely the entire contents of the landings reported in 2007 and 2008 would be prohibited under the proposal, as noted above, for purposes of determining the impact to small and micro-businesses, the department is assuming the scenario that would result in the greatest impact. Therefore, the average value of the catch would be a measure of the potential impact to small and micro-businesses.

There were 12 persons in 2007 who reported landing gag grouper; thus, using 2007 data, under the proposed rule the average loss per small or micro-business would be $331 per year. In 2008 there were four persons who reported landings; thus, using 2008 data, the average loss per small or micro-business would be $381. There were also unclassified (not identified by subspecies) grouper landings in 2007 of 279 lbs. and in 2008 of 1,936 lbs., with a corresponding dollar value of $796 and $3,998, respectively. Assuming the entire catch would be prohibited under the proposal and considering the aggregate of all classes of grouper landings as gag grouper, then the total loss in sales for all small and micro-businesses impacted under the rule as proposed would be no greater than $4,793 ($3,998 + $796) in 2007 and no greater than $5,528 ($1,526 + $3,998) in 2008. Using the 2007 and 2008 data, the average loss per small or micro-business under the proposal would be $399 in 2007 and $1,382 in 2008. The department, therefore, estimates that the average loss in sales for all impacted small or micro-businesses affected by the proposed rule would be $5,160 per year, with an average loss per small or micro-business of $891 per year assuming similar levels of effort and success.

The department considered several alternatives to the proposed rule, including leaving the current rules in place and closing Texas waters to the harvest of gag grouper. The alternative of leaving the current rules in place was rejected, primarily because it would not accomplish the goal of the rule, which is to be consistent with federal rules designed to reduce overfishing, but also because maintaining current rules would create confusion for recreational anglers with respect to differential bag limits in state and federal waters and because differential bag limits could cause difficulties in enforcement activities. The alternative of closing Texas waters was rejected because although it would undoubtedly result in stopping overfishing, it would impose a severe hardship on recreational and commercial anglers.

Gray Triggerfish

Based on permit data from 2007 and 2008, the department has determined that all persons who take gray triggerfish for commercial purposes in Texas qualify as micro-businesses. Until now, there have been no regulations governing the take of gray triggerfish in Texas waters. The proposed amendment regarding gray triggerfish would implement a 20-fish daily bag limit, a 40-fish possession limit, and a 14-inch total length minimum size limit.

The commercial gray triggerfish fishery is managed in federal waters by a commercial quota. When the quota is reached, the season is closed in federal waters. The department believes that most gray triggerfish landed in Texas are actually harvested in federal waters, and are therefore subject to federal restrictions rather than state rules. As a result, the department does not believe that the rule as proposed for gray triggerfish will have a significant impact on small or micro-businesses. However, in order to analyze the impact of the proposed rule on small and micro-businesses, the department is assuming the scenario that would have the greatest impact. There were 30 persons who reported landing gray triggerfish in 2007; and in 2008 there were 23 persons reporting landings. Therefore, the proposal regarding gray triggerfish would impact between 23 and 30 small or micro-businesses.

Gray triggerfish landings in Texas in 2007 consisted of 17,833 lbs. landed at a dollar value of $13,208. In 2008, there were 16,087 lbs. landed at a dollar value of $12,363. While it is unlikely the entire contents of the landings reported in 2007 and 2008 would be prohibited under the proposal, as noted above, for purposes of determining the impact to small and micro-businesses, the department is assuming the scenario that would result in the greatest impact. Therefore, the average value of the catch would be a measure of the potential impact to small and micro-businesses.

There were 30 persons who reported landing gray triggerfish in 2007; thus, based on 2007 data, the average loss in sales per small or micro-business under the rule as proposed would be $440 per year. In 2008 there were 23 persons reporting landings; thus, based on 2008 data, the average loss in sales per small or micro-business would be $537 per year. Assuming the entire catch would be prohibited under the proposal and considering and using the 2007 and 2008 data, the department therefore

estimates that the highest average loss in sales of per small or micro-business affected by the proposed rule will be $488 per year, assuming similar levels of effort and success.

The department considered several alternatives to the proposed rule, including leaving the current rules in place and closing Texas waters to the harvest of gray triggerfish. The alternative of leaving the current rules in place was rejected, primarily because it would not accomplish the goal of the rule, which is to be consistent with federal rules designed to reduce overfishing, but also because maintaining current rules would create confusion for recreational anglers with respect to differential bag limits in state and federal waters and because differential bag limits could cause difficulties in enforcement activities. The alternative of closing Texas waters was rejected because although it would undoubtedly result in stopping overfishing, it would impose a severe hardship on recreational and commercial anglers.

Flounder

The proposed regulation changes for flounder will exert an adverse economic impact on small or micro-businesses engaged in commercial fisheries operations. There are two primary groups of small or micro-businesses in the flounder fishery that are directly affected by the proposed rules: those who directly target flounder for harvest and those who harvest flounder as bycatch (incidental to other harvest operations). Based on permit data, the department has determined that all persons who take flounder for commercial purposes in Texas qualify as micro-businesses.

The proposed rules affecting the commercial harvest of flounder would reduce the daily bag limit from 60 fish to 30 fish, and would close the fishery during the month of November. The department has analyzed the adverse economic impact on small and micro-businesses affected by the proposed rules by addressing the historical number of trips resulting in the landing of more than 30 flounder (the proposed rule reduces the commercial daily bag limit from 60 fish to 30 fish), and by analyzing reporting data from the month of November.

In 2007 and 2008, flounder landings were reported by 45 and 67 commercial finfish fishermen, respectively. Therefore, the proposed rule would impact between 45 and 67 small or micro-businesses.

In 2007 there were a total of 361 trips, resulting in the landing of 17,291 pounds of flounder and an average catch per trip of 47.89 pounds. In 2008 there were a total of 521 trips landing 41,770 pounds for an average catch per trip of 80.17 pounds.

Data from 2007 indicate that 121 of the 361 trips resulted in landings of more than 30 flounder. The portion of the landings that exceeded 30 flounder totaled 3,918 pounds and was landed by 35 licensees. Using the average reported price for the 2007 season of $2.67 per pound, the total loss in sales for all small or micro-businesses would be $10,461.06 under the proposed 30-fish bag limit. Therefore, using 2007 data, the average adverse economic impact to a small or micro-business of the 30-fish bag limit would be $298.88. The greatest adverse economic impact to a single licensee, using 2007 data, would be $1,412.43.

In November of 2007, 20 licenses reported 69 trips, resulting in the landing of 3,508 pounds of flounder. Using the average reported price for the month of November 2007 of $2.55 per pound, the total lost sales for small or micro-businesses in 2007 as a result of a November closure be $8,945.40. The average loss in sales for small or micro-businesses would be $447.27.

Data from 2008 indicate that 338 out of the 521 trips resulted in landings of more than 30 flounder. The portion of the landings that exceed 30 flounder totaled 17,762 pounds and was landed by 56 licensees. Using the average reported price for the 2008 season of $2.60 per pound, the total loss in sales for all small or micro-businesses would be have been $46,181.20 under the proposed 30-fish bag limit. Therefore, using 2008 data, the average adverse economic impact to a small or micro-business of the proposed 30-fish bag limit would be $824.66. The greatest adverse economic impact to a single licensee would be $4,238.

In November of 2008, 12 licensees reported 49 trips, resulting in the landing of 5,967 pounds flounder. Using the average reported price for the month of November 2008 of $1.61 per pound, the total lost sales for small or micro-businesses in 2008 as a result of a November closure would be $9,606.87. The average loss in sales for small or micro-businesses would be $800.57.

By combining the results of the analyses of the adverse economic impacts of the 30-fish bag limit and the November closure and assuming all impacts are completely additive, the average adverse economic impacts to small and micro-businesses, based on 2007 data, would be $347.10 per year per licensee. Using 2008 data, this figure would be $812.61 per year per licensee. Thus, the probable average economic impact of the proposed rule on small and micro-businesses that take flounder under a finfish fisherman's license, based on 2007 and 2008 data, would be a loss of $579.85 per licensee per year, assuming similar levels of effort and success.

There will also be adverse economic impacts for small or micro-businesses that land flounder as incidental catch (bycatch). Because licensees landing flounder as bycatch would be limited to five-fish per day bag limit as opposed to the current ten-fish per day bag limit, the probable adverse economic impacts on these small or micro-businesses would be less than impacts on businesses fishing for flounder under a finfish fisherman's license (i.e., less than $579.85).

The department considered several alternatives to the proposed rule, including: (1) a five-fish recreational/30-fish commercial bag limit with no closure; (2) a November closure with no change to current bag limits; (3) a five-fish recreational/45-fish commercial bag limit with a November closure; (4) a five-fish recreational/40-fish commercial bag limit with a November closure; (5) a five-fish recreational/30-fish commercial bag limit with an October to December closure; and (6) an October to December closure with no change to bag limits. The department's data indicates that alternatives 1 - 4 will not achieve the goal of the proposed rules, which is to increase spawning biomass in flounder stocks to the historical levels documented in the early 1980's (approximately a 100% increase). Although the department's data indicates that alternatives 5 and 6 would achieve the goals of the rules, they would also impose an additional hardship on both recreational and commercial users. The department believes that a 30-fish commercial limit, a 5-fish recreational limit and a November closure would best balance competing interests in achieving the objective of the proposed amendment while being less burdensome to small and micro-businesses.

Paddle Craft License

With respect to the proposed amendment to §65.73, the department believes that most if not all persons doing business as a paddle-craft fishing guide qualify as small or micro-businesses. The department estimates that ten or fewer small or micro-busi-

nesses would be affected by the proposed rules. However, the department has determined that the rule as proposed will likely result in positive economic impacts to small businesses and micro-businesses. Businesses that currently operate under the all-water fishing guide license will not be required to obtain the new paddle craft all-water fishing guide license and thus will not be impacted by the proposed rule. However, a person or business who currently has an all-water fishing guide license, but wishes to provide fishing guide services only by paddle craft will no longer be required to obtain a United States Coast Guard (USCG) Operator of an Uninspected Passenger Vessel (OUPV) license.

The USCG OUPV currently costs $1,110. The current fee for the resident all-water fishing guide license is $200. Therefore, the cost of obtaining the resident all-water fishing guide license totals $1,310.

To obtain a paddle craft all-water fishing guide license under the proposed rule, a Texas resident would be required to pay approximately $745, which consists of the $200 fee for licensure (proposed elsewhere in this issue), approximately $45 for CPR/First Aid certification, and approximately $500 for the required kayak/canoe certifications. However, the $1,100 USCG OUPV would not be required. Therefore, the cost savings for a resident providing paddle craft fishing guide services would be approximately $565 per year.

For nonresidents, the current fee for the all-water fishing guide license is $1,000. When combined with the cost of the USCG OUPV, the cost of obtaining the resident all-water fishing guide license totals $2,100. For nonresidents wishing to guide by paddle craft only, the probable direct economic cost of compliance would be approximately $1,545, which consists of the $1,000 fee for licensure (proposed elsewhere in this issue), approximately $45 for CPR/First Aid certification, and approximately $500 for the required kayak/canoe certifications. However, the $1,110 USCG OUPV would not be required. Therefore, the cost savings for a nonresident providing paddle craft fishing guide services would be approximately $555 per year. As a result, the rule as proposed will not have an adverse impact on small or micro-businesses doing business as fishing guides.

The department has determined that the proposed rules affecting commercial fishing will have very little impact upon local employment at the macro or micro level and hence an insignificant impact upon local economies in the Gulf Coast geographical area. The department has determined that the direct employment impact of the proposed rules in this area will to varying degrees affect a total of 92 licensees who fish commercially in the Gulf of Mexico for species affected by the proposed regulations. For individuals harvesting sharks, greater amberjack, gag grouper, and gray triggerfish, the employment impact should be negligible because those persons must already comply with the same restrictions when fishing in federal waters.

For individuals harvesting species other than gar, the employment impacts of the rules, if any, should be temporary. As noted earlier, the proposed rule affecting alligator gar does not prohibit the commercial take of alligator gar; however, to remain in the fishery will require greater effort at a higher cost per fish taken, which will probably be a disincentive for continued commercial fishing operations of that kind. However, persons fishing under a commercial finfish fisherman's license are able to and probably will shift effort to other finfish species rather than stop fishing. Therefore, the employment impacts of the proposed rules will be limited to a small (fewer than 10) number of individuals who commercially harvest gar in freshwater.

The direct employment impacts of the proposed rule governing commercial take of flounder should be positive over time, as the proposed rules are intended to recover spawning biomass and restore the fishery.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone or e-mail to: Robert Macdonald (Wildlife, (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us), Ken Kurzawski (Inland Fisheries, (512) 389-4591; e-mail: ken.kurzawski@tpwd.state.tx.us), Paul Hammerschmidt (Coastal Fisheries, (512) 389-4650; e-mail: paul.hammerschmidt@tpwd.state.tx.us), or David Sinclair (Law Enforcement, (512) 389-4854; e-mail: david.sinclair@tpwd.state.tx.us), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.3, §65.10

The amendments are proposed under the authority of Parks and Wildlife Code, §42.0188, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; and Parks and Wildlife Code, Chapter 47, which authorizes the commission to adopt rules governing the issuance and use of resident and nonresident fishing guide licenses, including rules creating separate fishing guide licenses for use in saltwater and freshwater.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 47, and 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) - (40) (No change.)

(41) Paddle craft--Any non-motorized vessel.

(42) Paddle-craft fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons by means of a non-motorized vessel engaged in fishing in the coastal waters of this state.

(43) [~~(41)~~] Permanent residence--One's principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin, tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(44) [~~(42)~~] Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(45) [~~(43)~~] Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(46) [~~(44)~~] Purse seine (net)--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(47) [~~(45)~~] Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(48) [~~(46)~~] Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(49) [~~(47)~~] Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(50) [~~(48)~~] Silencer or sound-suppressing device--Any device that reduces the normal noise level created when the firearm is discharged or fired.

(51) [~~(49)~~] Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not; include arrows.

(52) [~~(50)~~] Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(53) [~~(51)~~] Spike-buck deer--A buck deer with no antler having more than one point.

(54) [~~(52)~~] Throwline--A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(55) [~~(53)~~] Trap--A rigid device of various designs and dimensions used to entrap aquatic life.

(56) [~~(54)~~] Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(57) [~~(55)~~] Trotline--A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(58) [~~(56)~~] Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(59) [~~(57)~~] Unbranched antler--An antler having no more than one antler point.

(60) [~~(58)~~] Upper-limb disability--A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(61) [~~(59)~~] Wildlife resources--Alligators, all game animals, all game birds, and aquatic animal life.

(62) [~~(60)~~] Wounded deer--A deer leaving a blood trail.

§65.10. Possession of Wildlife Resources.

(a) (No change.)

(b) Under authority of Parks and Wildlife Code, §42.0177, the tagging requirements of Parks and Wildlife Code, §42.018 are modified as follows.

(1) Tagging requirements for a carcass cease when a carcass is at a final destination and:

(A) all skin has been removed from the carcass; and

(B) at least one forequarter or hindquarter has been completely severed from the carcass.

(2) The provisions of this subsection do not:

(A) modify or eliminate any requirement of this subchapter or the Parks and Wildlife Code applicable to a carcass before it is at a final destination; or

(B) apply to any other documentation requirement of this subchapter or the Parks and Wildlife Code applicable to a carcass before it has been processed beyond quartering.

(c) [~~(b)~~] A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) under the provisions of §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) under an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(5) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(6) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271;

(7) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program; or

(8) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(d) [~~(c)~~] A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(e) [~~(d)~~] Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and/or bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) deer:

(A) buck: the head, with antlers still attached;

(B) antlerless: the head;

(3) antelope: the unskinned head; and

(4) pheasant: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(f) [~~(e)~~] No additional proof of sex is required for a deer that is lawfully tagged in accordance with:

(1) the provisions of §65.26 of this title;

(2) the provisions of §65.34 of this title;

(3) the provisions of §65.28 of this title;

(4) the provisions of §65.32 of this title;

(5) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or

(6) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(g) [~~(f)~~] In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(h) [~~(g)~~] A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(4) A taxidermist who accepts a deer or turkey shall retain the wildlife resource document or tag accompanying each deer or turkey for a period of two years following the return of the resource to the owner or the sale of the resource under the provisions of Parks and Wildlife Code, §62.023.

(i) [~~(h)~~] It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

(j) [~~(i)~~] The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram;

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative; and

(C) the landowner on whose property the skull was found signs an affidavit prior to the time the skull is marked that attests the place and date that the person discovered the ram.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004.

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900484
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of Parks and Wildlife Code, §42.0188, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; Parks and Wildlife Code; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

The proposed repeal affects Parks and Wildlife Code, Chapters 42 and 61.

§65.42. Deer.

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

Filed with the Office of the Secretary of State on February 9, 2009.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §§65.42, 65.56, 65.64

The amendments and new section are proposed under the authority of Parks and Wildlife Code, §42.0188, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; Parks and Wildlife Code; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

The proposed amendments and new section affect Parks and Wildlife Code, Chapters 42 and 61.

§65.42. Deer.

(a) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits (control permits));

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(6) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(7) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons, annual bag limits, and special provisions for white-tailed deer shall be as follows. If Managed Lands Deer Permits (MLDPs) have been issued for a tract of land in any county, they must be attached to all deer harvested on the tract of land, regardless of season. An MLDP buck permit may not be used to harvest or tag an antlerless deer. An MLDP antlerless permit may not be used to tag a buck deer.

(1) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Atascosa County there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In Atascosa County, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239), and Wilbarger counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(5) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than one buck.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, there is a general open season.

(A) Open season: from first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(7) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except on USFS lands in Montague and Wise counties, where antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(II) On all tracts of land other than those listed in subclause (I) of this clause, no permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(8) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south if U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: Four deer, no more than two bucks and no more than two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been

issued. In the counties listed in this paragraph, a legal buck is a buck having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from opening day through the Sunday immediately following Thanksgiving Day. From the Monday immediately following Thanksgiving Day until the end of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(9) In Bowie, Cass, Harrison, Marion, Nacogdoches, Panola, Rusk, Sabine, San Augustine, and Shelby counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits during the first 16 days of the season. After the first 16 days of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(10) In Anderson, Brazos, Camp, Delta, Fannin, Franklin, Gregg, Grimes, Henderson, Hopkins, Hunt, Lamar, Leon, Madison, Morris, Rains, Red River, Robertson, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except in Fannin County.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day. At all other times, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(11) In Grayson County there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions. Lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. Antlerless deer may be taken by MLD antlerless permits only. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(12) In Austin, Bastrop, Bell (east of IH 35), Burleson, Caldwell, Colorado, Comal (east of IH 35), De Witt, Ellis, Falls, Fayette, Freestone, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Limestone, Milam, Navarro, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of IH 35) and Wilson counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) Antlerless deer may be taken by MLD antlerless or LAMPS permits only.

(II) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(13) In Dallam, Dawson, Deaf Smith, Hansford, Hartley, Martin, Moore, Oldham, Potter, Randall, Sherman, and Swisher counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(14) In Crane, Ector, Loving, Midland, and Ward counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) Antlerless deer may be taken by MLD antlerless or LAMPS permits only.

(15) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(16) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(17) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Angelina, Austin, Bastrop, Bowie, Brazoria, Brewster, Caldwell, Camp, Cass Chambers, Cherokee, Colorado, Culberson, DeWitt, Fayette, Fort Bend, Goliad, Gonzales, Gregg, Guadalupe, Hardin, Harris, Harrison, Houston, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Lavaca, Lee, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Presidio, Reeves, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Upshur, Victoria, Walker, Waller, Washington, Wharton, and Wilson counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) Open Season: 14 consecutive days starting the first Monday following the first Sunday in January.

(B) Bag limit: as specified in this section for the general season in the county in which take occurs.

(C) Special provisions:

(i) Buck deer. In any given county, all restrictions established in this subsection for the take of buck deer during the general season remain in effect.

(ii) Antlerless deer. No permit is required for the take of antlerless deer, except:

(I) on properties for which antlerless MLDPs have been issued; and

(II) in the counties that are also listed in paragraph (10) of this subsection.

(18) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (13) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews, Bailey, Cochran, Gaines, Hockley, Lamb, Martin, Parmer, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.56. Lesser Prairie Chicken: Open Season, Bag, and Possession Limits

[~~(a)~~] There is no open season for lesser prairie chicken [~~except on properties for which the department has approved a wildlife management plan that contains a component specifically addressing the management of lesser prairie chicken~~].

~~[(1) Open season: Third Saturday in October for two consecutive days.]~~

~~[(2) Daily bag limit: Two lesser prairie chickens.]~~

~~[(3) Possession limit: Four lesser prairie chickens.]~~

~~[(b) It is unlawful to hunt prairie chicken by any means other than shotgun.]~~

§65.64. Turkey.

(a) (No change.)

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

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

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)[~~(A)~~] of this subsection [~~section~~].

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3)[~~(A)(ii)~~] of this subsection.

(c) (No change.)

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.73

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 47, which authorizes the commission to adopt rules governing the issuance and use of resident and nonresident fishing guide licenses, including rules creating separate fishing guide licenses for use in saltwater and freshwater; and Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapters 47 and 61.

§65.72. Fish.

(a) (No change.)

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Except as provided in subparagraph (D) of this paragraph, the statewide daily bag and length limits shall be as follows. Figure: 31 TAC §65.72(b)(2)(C)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Freshwater species.
Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Saltwater species.
Figure: 31 TAC §65.72(b)(2)(D)(ii) (No change.)

(iii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iv) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(v) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

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

(5) Device restrictions.

(A) - (E) (No change.)

(F) Lawful archery equipment. Only non-game fish [~~, channel catfish, blue catfish, and flathead catfish~~] may be taken with lawful archery equipment or crossbow. [~~After August 31, 2008, only nongame fish may be taken by means of lawful archery or crossbow.~~]

(G) - (R) (No change.)

§65.73. Fishing Guide License--Required Documentation.

(a) No person shall engage in business as a fishing guide in the coastal waters of this state unless that person possesses a fishing guide license and has paid the appropriate licensure fee for saltwater use.

(b) No person operating a vessel or boat as a fishing guide on or in the coastal waters of this state may be issued a Fishing Guide license unless the person presents documentation to the license deputy that the applicant possesses a valid and appropriate U.S. Coast Guard Operator's License.

(c) No person shall engage in business as a paddle craft fishing guide in the coastal waters of this state unless that person possesses a Paddle Craft All-Water Fishing Guide license or an All Water Fishing Guide license and has paid the appropriate license fee.

(d) No person may be issued a Paddle Craft All-Water Fishing Guide license unless the person possesses proof that the person has successfully completed:

(1) training in CPR and First Aid from a department-approved organization;

(2) a department-approved boater education course or equivalency examination; and

(3) the "Three Star Sea Kayak" and "Four Star Leader Sea Kayak" training from the British Canoe Union; or

(4) "Level II Essentials of Kayak Touring" and "Coastal Kayak Day Trip Leading" from the American Canoe Association.

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900486
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.201, and 65.202, concerning Public Lands Proclamation, and §65.256, concerning the Bobcat Proclamation.

The proposed amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to readopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §65.190, concerning Application, would add the McGillvray and Leona McKie Muse Wildlife Management Area (WMA) to the list of named WMAs to which the provisions of the subchapter apply. The Muse WMA was do-

nated to the department in 2008 and is named in honor of the donors. The proposed amendment also would rename Peach Point WMA as the Justin Hurst WMA. Justin Hurst began his career with the department as a biologist, became a game warden, and was killed in the line of duty in 2008. Peach Point WMA has been renamed in his honor. See, Texas House Bill 12, §53, 80th Texas Legislature, Regular Session (2007)

The proposed amendment to §65.201, concerning Motor Vehicles, would alter subsection (d) to stipulate that persons using motor vehicles or off-road vehicles to assist a disabled hunter must remain with normal speaking distance of the person being assisted unless such use is otherwise authorized or the person is using the vehicle or off-road vehicle to return to a designated road or trail. The current rules allowing the use of motor vehicles and off-road vehicles to assist disabled hunters are not intended to provide able-bodied persons a privilege that is not available to other able-bodied hunters. The proposed amendment is necessary to ensure that motor vehicle and off-road vehicles use for assisting disabled hunters be confined to assisting the disabled hunter.

The proposed amendment to §65.202, concerning Minors Hunting on Public Lands, would replace the word "minor" with the word "youth" and retitle the section to refer to "public hunting lands." The word "minor" is normally used to refer to a person below the age of 18 which is the age of legal majority, Texas Family Code §101.003. Since the rules refer to individuals under the age of 12 years, the term "youth" is more accurate. The proposed amendment would require youth under the age of 12 to be accompanied by a permitted adult when hunting. The proposed amendment would relax the supervision requirements for a youth age 12 or older who has completed hunter education, so long as a supervising adult is on the public hunting area, The proposed amendment is intended to allow some autonomy for responsible youths, while also ensuring appropriate supervision.

The proposed amendment to §65.256, concerning Penalties, corrects an inaccurate reference to statutory provisions for penalties. The current rule refers to Parks and Wildlife Code, Chapter 71. Chapter 71 governs furbearing animals; however, bobcats are classified by statute as nongame under Chapter 67.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be accurate and consistent rules governing public hunting lands.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rules.

Comments on the proposed rules may be submitted to Ms. Vickie Fite, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4773 (e-mail: vickie.fite@tpwd.state.tx.us).

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.201, 65.202

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 81, which authorizes the department to develop, maintain, and operate, wildlife management areas and public hunting lands and to prescribe the means, methods, and conditions for the taking of game or fish during an open season in wildlife management areas or public hunting lands.

The proposed amendments affect Parks and Wildlife Code, Chapters 67 and 81.

§65.190. Application.

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

(e) Public hunting lands include, but are not limited to, the following:

(1) - (25) (No change.)

(26) Justin Hurst WMA (Unit 731);

(27) [~~(26)~~] Keechi Creek WMA (Unit 726);

(28) [~~(27)~~] Kerr WMA (Unit 756);

(29) [~~(28)~~] Lake McClellan Recreation Area (Unit 906);

(30) [~~(29)~~] Lower Neches WMA (Unit 728)--includes Old River Unit and Nelda Stark Unit;

(31) [~~(30)~~] Mad Island WMA (Unit 729);

(32) [~~(31)~~] Mason Mountain WMA (Unit 749);

(33) [~~(32)~~] Matador WMA (Unit 702);

(34) [~~(33)~~] Matagorda Island WMA (Unit 722);

(35) McGillvray and Leona McKie Muse WMA (Unit 750);

(36) [~~(34)~~] M.O. Neasloney WMA;

(37) [~~(35)~~] Moore Plantation WMA (Unit 902);

(38) [~~(36)~~] Nannie Stringfellow WMA (Unit 716);

(39) [~~(37)~~] North Toledo Bend WMA (Unit 615);

(40) [~~(38)~~] Old Sabine Bottom WMA (Unit 732);

(41) [~~(39)~~] Old Tunnel WMA;

(42) [~~(40)~~] Pat Mayse WMA (Unit 705);

[~~(41) Peach Point WMA (Unit 721);~~]

(43) [~~(42)~~] Ray Roberts WMA (Unit 501);

(44) [~~(43)~~] Redhead Pond WMA;

(45) [~~(44)~~] Richland Creek WMA (Unit 703);

(46) [~~(45)~~] Sam Houston National Forest WMA (Unit 905);

(47) [~~(46)~~] Sierra Diablo WMA (Unit 767);

(48) [~~(47)~~] Somerville WMA (Unit 711);

(49) [~~(48)~~] Tawakoni WMA (Unit 708);

(50) [~~(49)~~] Walter Buck WMA (Unit 757);

(51) [~~(50)~~] Welder Flats WMA;

(52) [~~(51)~~] White Oak Creek WMA (Unit 727); and

(53) [~~(52)~~] Other numbered units of public hunting lands.

§65.201. Motor Vehicles.

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

(d) Except as authorized for specific areas and time periods by order of the executive director, or by written permission of the hunt supervisor or area manager, it is an offense for an individual other than a disabled person or a person directly assisting a disabled person to operate an off-road vehicle on public hunting lands. A person who uses an off-road vehicle to directly assist a disabled person under the provisions of this subchapter may not use the off-road vehicle to travel beyond normal speaking distance of the disabled person:

(1) except to return to an authorized road or trail; or

(2) unless such use is authorized by the department on the unit of public hunting lands at that time.

(e) (No change.)

§65.202. Youth [~~Minors~~] Hunting on Public Hunting Lands.

(a) Youth participating in public hunts by special permit must be eight years of age or older at the time of application.

(b) It is an offense for a person younger than 12 years of age [~~youth~~] to fail to be under the immediate supervision of a duly permitted and authorized supervising adult when hunting on public hunting lands. For a person 12 years of age or older [~~youth~~] who has received hunter education certification, the requirement for immediate supervision is relaxed to the extent that the authorized supervising adult is required only to be present on the public hunting area. The authorized supervising adult is responsible for the actions and liability of the youth.

(c) Youth participating in a youth waterfowl hunt during the federal youth waterfowl hunting season must be 15 years of age or younger.

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900487
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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SUBCHAPTER J. BOBCAT PROCLAMATION

31 TAC §65.256

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.256. Penalties.

The penalties for violations of this subsection shall be as prescribed in Parks and Wildlife Code, Chapter 67 [~~71~~].

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900488
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §65.610, §65.612

The Texas Parks and Wildlife Department proposes an amendment to §65.610 and §65.612, concerning Deer Breeder Permits. The proposed amendments would allow for the donation of deer by a deer breeder to the holder of a valid educational display permit or zoological permit, either by transfer or as a consequence of the termination, suspension, or revocation of a deer breeder permit. Currently, the holder of a deer breeder permit may transfer a deer held under the permit to certain persons and for certain purposes set out §65.610. However, the current list does not include the holder of a zoological or educational display permit. Similarly, the current rule allows the disposition of breeder deer upon the loss of a breeder permit by sale or donation to certain persons set out §65.612. Although the transfer to the holder of a zoological permit is permitted, transfer to the holder of an educational display permit it not. Allowing the transfer of a deer held under a breeder permit to the holder of a educational display or zoological permit would be beneficial to those permit holders. Therefore, the department sees no reason not to allow such a practice. The proposed amendments also would stipulate that such donations are final and irreversible, which is necessary to ensure the integrity of the department's ability to maintain accurate records of deer held by deer breeders.

Mr. Clayton Wolf, Big Game Program Director, has determined that for each of the first five years that the rules as proposed

are in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rules.

Mr. Wolf also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the creation of an additional source of deer for persons using deer for educational display purposes.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. In particular, the proposed rule would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Clayton Wolf, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: clayton.wolf@tpwd.state.tx.us).

The rules are proposed under the authority of Parks and Wildlife Code, §43.357, which authorizes the commission to make regulations governing procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer.

The proposed rule affects Parks and Wildlife Code, Chapter 43.

§65.610. Transfer of Deer.

(a) (No change.)

(b) Transfer by deer breeder. The holder of a valid deer breeder's permit may transfer legally possessed breeder deer:

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

(5) to an individual for the purpose of obtaining medical attention, provided the breeder deer do not leave this state; [~~and~~]

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis; or

(7) to the holder of a valid educational display or zoological permit. A transfer under this paragraph is final; breeder deer donated to the holder of an educational display or zoological permit may not be returned to any breeder facility.

(c) - (f) (No change.)

§65.612. Disposition of Deer.

(a) Upon termination, suspension, or revocation of a deer breeder's permit, the permittee shall dispose of all breeder deer covered by the permit.

(b) Breeder deer may be disposed of by:

(1) sale or donation to another deer breeder;[~~,~~]

(2) [~~by~~] sale or donation to a holder of a zoological permit;[~~,~~]

(3) sale or donation to the holder of an educational display permit; or

(4) [~~by~~] release to the wild as specifically authorized by the department.

(c) Breeder deer still in possession 30 days following termination, revocation, or suspension of a permit shall be disposed of at the discretion of the department.

(d) Disposition of all breeder deer shall be at the expense of the permittee.

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900489
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §3.121

The Comptroller of Public Accounts proposes an amendment to §3.121, concerning definitions, imposition of tax, permits, and reports. New subsection (a)(1) is added to provide a definition of affiliate, and subsequent subsections are renumbered. Renumbered subsection (a)(12) is amended to clarify the definition of "manufacturer's list price." The renumbered subsection (a)(12) amendment clarifies the term "manufacturer's list price" specifying that the price upon which the tax is based is the price reported monthly by manufacturers to the comptroller as required by Tax Code, §155.103(a)(4), which is the highest price at which a product is offered to distributors in Texas who are not affiliates of the manufacturer. Renumbered subsection (a)(12) clarifies and underscores manufacturers' statutory duty to file reports each month that include manufacturer's list price information. Subsec-

tion (b)(2) is amended to clarify that free cigars are taxed at the prevailing factory list price and free tobacco products are taxed at the prevailing manufacturer's list price. Subsection (b)(4) is amended to make a technical correction. Subsection (e)(6) is amended to delete wording that was included for clarification prior to September 1, 1999, but since that date has passed, the wording is no longer needed.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, the proposed amendment would have no significant fiscal impact on units of local government. The proposed amendment would benefit the public by eliminating confusion that has resulted in refund claims, threatened litigation and settlements over taxes due from distributors of tobacco products other than cigars. The resulting clarification would help ensure that the state collects the full amount of the tax imposed by the Legislature from all parties. Since the Legislature dedicated this tax in part to property tax relief, the public will enjoy the benefit of this improvement in the form of greater property tax relief.

Mr. Heleman also has determined that the proposed amendment would have a positive fiscal impact on state government revenues, with gains to both the General Revenue Fund 0001 and the Property Tax Relief Fund 0304. This rule is adopted 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.

Figure: 34 TAC Chapter 3--Preamble

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, 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, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §155.021(b) and §155.0211(b).

§3.121. Definitions, Imposition of Tax, Permits, and Reports.

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

(1) Affiliate--A person who, because of stock ownership, contract, or otherwise, controls, is controlled by, or is under common control with another person.

(2) [~~(1)~~] Bonded agent--A person in Texas who is an agent for a principal located outside of Texas and who receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the principal.

(3) [~~(2)~~] Cigar--A roll of fermented tobacco that is wrapped in tobacco and that the main stream of smoke from which produces an alkaline reaction to litmus paper.

(4) [~~(3)~~] Common carrier--A motor carrier registered under Transportation Code, Chapter 643, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or its successor agency.

(5) [~~(4)~~] Distributor--A person who:

(A) receives tobacco products from a manufacturer for the purpose of making a first sale in Texas;

(B) brings or causes to be brought into Texas tobacco products for sale, use, or consumption.

(6) [~~(5)~~] Factory list price--The published manufacturer gross cost to the distributor.

(7) [~~(6)~~] Export warehouse--A location in this state from which a person receives tobacco products from manufacturers and stores the tobacco products for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(8) [~~(7)~~] First sale--Except as otherwise provided by this section, the term means:

(A) the first transfer of possession in connection with purchase, sale, or any exchange for value of tobacco products in intrastate commerce;

(B) the first use or consumption of tobacco products in this state; or

(C) the loss of tobacco products in this state whether through negligence, theft, or other loss.

(9) [~~(8)~~] Importer or import broker--A person who ships, transports, or imports into Texas tobacco products manufactured or produced outside the United States for the purpose of making a first sale in this state.

(10) [~~(9)~~] Manufacturer--A person who manufactures or produces tobacco products and sells tobacco products to a distributor.

(11) [~~(10)~~] Manufacturer's representative--A person who is employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

(12) [~~(11)~~] Manufacturer's list price--The price required to be reported monthly to the comptroller under Tax Code, §155.103(a)(4), which shall be the highest gross price for purchase at which units of a product are offered to distributors in Texas who are not affiliates of the manufacturer, inclusive of all delivery, destination or other charges of any kind that are assessed based on the number of units sold. A selling price less than the manufacturer's list price is assumed to include a trade discount, special discount or deal [~~published manufacturer gross cost to the distributor. The term is synonymous with factory list price~~].

(13) [~~(12)~~] Permit holder--A bonded agent, distributor, importer, manufacturer, wholesaler, or retailer required to obtain a permit under Tax Code, §155.041.

(14) [~~(13)~~] Place of business--the term means:

(A) a commercial business location where tobacco products are sold;

(B) a commercial business location where tobacco products are kept for sale or consumption or otherwise stored and may not be a residence or a unit in a public storage facility; or

(C) a vehicle from which tobacco products are sold.

(15) [~~(14)~~] Retailer--A person who engages in the practice of selling tobacco products to consumers and includes the owner of a coin-operated vending machine.

(16) [~~(15)~~] Tobacco product--A cigar; smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing

tobacco, including plug, scrap, and any kind of tobacco suitable for chewing; snuff or other preparations of pulverized tobacco; or an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

(17) [~~(16)~~] Trade discount, special discount, or deals--Includes promotional incentive discounts, quantity purchase incentive discounts, and timely payment or prepayment discounts.

(18) [~~(17)~~] Weight of a cigar--The combined weight of tobacco and nontobacco ingredients that make up the total product in the form available for sale to the consumer, excluding any carton, box, label, or other packaging materials.

(19) [~~(18)~~] Wholesaler--A person, including a manufacturer's representative, who sells or distributes tobacco products in this state for resale but who is not a distributor.

(b) Imposition of tax. A tax is imposed and becomes due and payable when a permit holder receives cigars or tobacco products for the purpose of making a first sale in this state.

(1) (No change.)

(2) Free cigars [~~goods~~] shall be taxed at the prevailing factory list price and free tobacco products shall be taxed at the prevailing manufacturer's list price.

(3) (No change.)

(4) A tax is imposed on manufacturers, who manufacture tobacco products in this state, at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce.

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

(c) - (d) (No change.)

(e) Permit Fees. An application for a bonded agent, distributor, importer, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the required fee.

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

(6) The permit fee for a retailer permit [~~issued or renewed after August 31, 1999,~~] is $180. Retailers who fail to obtain or renew a retailer permit in a timely manner are liable for the fee in effect for the applicable permit period, in addition to the fee described in paragraph (7) of this subsection.

(7) - (10) (No change.)

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900490
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 22, 2009
For further information, please call: (512) 475-0387

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS AND MIDDLE COLLEGES

19 TAC §§4.153 - 4.155, 4.159, 4.161

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §§4.153 - 4.155, 4.159 and 4.161 which appeared in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6687).

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900416
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 3, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.6

The State Board of Dental Examiners withdraws the proposed new §115.6 which appeared in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6269).

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900449
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 6, 2009
For further information, please call: (512) 475-0972

♦ ♦ ♦

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

Proposed amended §575.27, published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6055), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900405

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §3.121

The Comptroller of Public Accounts withdraws the proposed amendment to §3.121 which appeared in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7142).

Filed with the Office of the Secretary of State on February 9, 2009.

TRD-200900491
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: February 9, 2009
For further information, please call: (512) 475-0387

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS

DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §§1.1000 - 1.1004

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter P, Division 1, §§1.1000 - 1.1004, concerning the procedures for appealing the department's action affecting the participation in the department's Child and Adult Care Food Program (CACFP), without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9593). The new division is adopted to put into rule form and make some revisions to the appeal procedures for the CACFP to better conform to the requirements in 7 Code of Federal Regulation §226.6 and to provide for standardized procedures for appealing the department's actions affecting the participation in the CACFP. The department, in a separate submission, is adopting the repeal of Chapter 25, Subchapter A, Division 20, which includes the existing appeal rules for the CACFP.

New §1.1000 provides definitions to be used in the subchapter. New §1.1001 provides requirements for request for administrative review concerning institutions, responsible principals and responsible individuals and sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures, and combined reviews, and states the effect of agency action. New subsection (c)(6) makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Child and Adult Care Food Program, a hearing is automatically provided upon receipt by TDA of a request for administrative review. This change is being made to make these rules consistent with federal guidelines, that require that a hearing be requested, if desired, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e. wthout a hearing). New §1.1002 provides requirements for an abbreviated administrative review. New §1.1003 provides requirements for a suspension review. New §1.1004 provides requirements for request for administrative review concerning day care homes and sets forth requirements regarding what actions are and are not subject to administrative review, and appeal procedures.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the CACFP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 2. APPEAL PROCEDURES FOR THE SUMMER FOOD SERVICE PROGRAM (SFSP)

4 TAC §1.1010, §1.1011

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter P, Division 2, §1.1010 and §1.1011, concerning the procedures for appealing the department's action affecting the participation in the department's Summer Food Service Program (SFSP), without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9597). The new division is adopted to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §225.13 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SFSP. The department, in a separate submission, is adopting the repeal of Chapter 25, Subchapter B, Division 14, which includes the existing appeal rules for the SFSP.

New §1.1010 provides definitions to be used in the subchapter. New §1.1011 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures, and states the effect of agency action. New subsection (c)(6) makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review, if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Summer Food Service Program, a hearing is automatically provided upon receipt by TDA of a request for administrative review. This change is being made to make rules consistent with federal guidelines, that require that a hearing be requested, to make all program appeals consistent, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e., without a hearing).

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SFSP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 3. APPEAL PROCEDURES FOR THE NATIONAL SCHOOL LUNCH PROGRAM (NSLP)

4 TAC §1.1020, §1.1021

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter P, Division 3, §1.1020 and §1.1021, concerning the procedures for appealing the department's action affecting the participation in the department's National School Lunch Program (NSLP), without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9599). The new division is adopted to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §210.18 and to provide for standardized procedures for appealing the department's actions affecting the participation in the NSLP. The department, in a separate submission, is adopting the repeal of Chapter 25, Subchapter E, Division 9, which contains the existing appeal rules for the NSLP.

New §1.1020 provides definitions to be used in the subchapter. New §1.1021 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the NSLP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 4. APPEAL PROCEDURES FOR THE SCHOOL BREAKFAST PROGRAM (SBP)

4 TAC §1.1030, §1.1031

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter P, Division 4, §1.1030 and §1.1031, concerning the procedures for appealing the department's action affecting the participation in the department's School Breakfast Program (SBP), without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9600). The new division is adopted to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §220.13 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SBP. The department, in a separate submission, is adopting the repeal of Chapter 25, Subchapter D, Division 9, which contains the existing appeal rules for the SBP.

New §1.1030 provides definitions to be used in the subchapter. New §1.1031 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SBP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 5. APPEAL PROCEDURES FOR THE SPECIAL MILK PROGRAM FOR CHILDREN (SMP)

4 TAC §1.1040, §1.1041

The Texas Department of Agriculture (the department) adopts new Chapter 1, Subchapter P, Division 5, §1.1040 and §1.1041, concerning the procedures for appealing the department's action affecting the participation in the department's Special Milk Program for Children (SMP), without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9602). The new division is adopted to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §215.11 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SMP. The department, in a separate submission, is adopting the repeal of Chapter 25, Subchapter C, Division 9, which contains the existing appeal rules for the SMP.

New §1.1040 provides definitions to be used in the subchapter. New §1.1041 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SMP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 6. ADMINISTRATIVE HEARING PROCEDURES FOR CONDUCTING THE APPEALS OF THE FOOD AND NUTRITION PROGRAMS

4 TAC §§1.1050 - 1.1053

The Texas Department of Agriculture (TDA) adopts new Chapter 1, Subchapter P, Division 6, §§1.1050 - 1.1053, concerning the procedures for hearing appeals of the department's action affecting the participation in the department's Food and Nutrition Programs, without change to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9603). The new division is adopted to put into rule form and make some revisions to TDA's appeal hearing procedures to better conform to the requirements in 7 Code of Federal Regulation §§210.18, 215.11, 220.13, 225.13 and 226.6 and to provide for standardized procedures for hearing appeals of the department's actions affecting the participation in the Food and Nutrition Programs.

New §1.1050 provides definitions to be used in the subchapter. New §1.1051 sets forth the purpose of the new rule. New §1.1052 sets forth the hearing procedures. New §1.1053 provides requirements for the standard of review and burden of proof for the hearing. New §1.1052 makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official (ARO) conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP), a hearing is automatically provided upon receipt by TDA of a request for administrative review. In appeals brought under the National School Lunch Program (NSLP), a hearing must be requested at the time an appeal is filed. This change is being made to make rules consistent with federal guidelines, that require that a hearing be requested, to make all program appeals consistent, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e. without a hearing). New §1.1053 provides that the burden of proof in an appeal hearing be on TDA, rather than the appellant. Appeals brought under the CACFP currently use this standard, while other programs place the burden on the appellant. TDA has placed the burden of proof on TDA for all programs in order to ensure that program procedures are consistent and that the appellant and the ARO conducting the hearing are provided with a thorough understanding of the basis for the action being taken.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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CHAPTER 25. SPECIAL NUTRITION PROGRAMS

The Texas Department of Agriculture (department) adopts the repeal of Chapter 25, Subchapter A, Division 20, §§25.511 - 25.520, relating to appeals under the Child and Adult Care Food Program; Subchapter B, Division 14, §§25.811 - 25.814, relating to appeals under the Summer Food Service Program; Subchapter C, Division 9, §25.1001 and §25.1002, relating to appeals under the Special Milk Program; Subchapter D, Division 9, §25.1201 and §25.1202, relating to appeals under the School Breakfast Program; and Subchapter E, Division 9, §25.1411 and §25.1412, relating to appeals under the National School Lunch Program, without changes to the proposal published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9606).

The repeals are adopted to allow the department to adopt uniform appeal and hearing procedures for all food and nutrition programs. The repealed sections are replaced by appeal and hearing procedures adopted to be included in Title 4, Chapter 1, Subchapter P, which includes general rules of practice for other TDA programs. The adopted new appeal and hearing procedures are published in the adopted rule section of this issue of the *Texas Register.*

No comments were received on the proposal.

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
DIVISION 20. APPEALS

4 TAC §§25.511 - 25.520

The repeal of Chapter 25, Subchapter A, Division 20, §§25.511 - 25.520, is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM (SFSP)
DIVISION 14. APPEALS

4 TAC §§25.811 - 25.814

The repeal of Chapter 25, Subchapter B, Division 14, §§25.811 - 25.814, is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SPECIAL MILK PROGRAM (SMP)
DIVISION 9. APPEALS

4 TAC §25.1001, §25.1002

The repeal of Chapter 25, Subchapter C, Division 9, §25.1001 and §25.1002, is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. SCHOOL BREAKFAST PROGRAM (SBP)
DIVISION 9. APPEALS

4 TAC §25.1201, §25.1202

The repeal of Chapter 25, Subchapter D, Division 9, §25.1201 and §25.1202, is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. NATIONAL SCHOOL LUNCH PROGRAM (NSLP)
DIVISION 9. APPEALS

4 TAC §25.1411, §25.1412

The repeal of Chapter 25, Subchapter E, Division 9, §25.1411 and §25.1412, is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 26. FOOD AND NUTRITION DIVISION
SUBCHAPTER A. TEXAS PUBLIC SCHOOL NUTRITION POLICY

4 TAC §§26.1 - 26.9

The Texas Department of Agriculture (TDA) adopts new Chapter 26, Subchapter A, §§26.1 - 26.9, concerning the Texas Public School Nutrition Policy (TPSNP), proposed in the November 28, 2008, issue of the *Texas Register.* Sections 26.2 - 26.4 and 26.9 are adopted with changes. Sections 26.1 and 26.5 - 26.8 are adopted without changes and will not be republished.

The new sections are adopted to adopt by rule the existing TPSNP, in accordance with recommendations made by the Sunset Advisory Commission in its review of the Texas Department of Agriculture. Recognizing that our schools are in a powerful position to influence children and their eating habits, TDA established the TPSNP in 2004 in response to alarming data showing that Texas children were overweight or obese at a significantly higher rate than the nation as a whole. The TPSNP was created in collaboration with public, private and government entities representing the policy's stakeholders, including parents, school administrators, health professionals, and members of the food industry. In addition, in 2007, TDA established the Healthy Students=Healthy Families Advisory Committee to evaluate the TPSNP from the perspective of various stakeholders including health officials, parents, school administrators, and more. Also in 2007, to highlight the commendable role our schools are playing in providing nutritious meals and to point to a more comprehensive focus, TDA began promoting the Three E's of Healthy Living: Education, Exercise and Eating Right. Originally a set of nutrition guidelines, TPSNP enhances the nutrition standards for all foods served in Texas public schools participating in the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and School Breakfast Program, including school meals, a la carte items, snack bars, vending machines, school stores, and fundraising through grade-specific guidelines for unregulated foods. The TPSNP was amended in 2006 to enact greater restrictions on competitive foods, candy, fats, and frying. The purpose of the TPSNP, since its creation, has been to promote a healthier environment in Texas schools and to help ensure a healthier future for Texas children. The adopted sections include the policy, all updates to the policy, and all revisions for school years 2008-09 and 2009-10.

New §26.1 provides a statement of purpose. New §26.2 provides definitions of terms that are used in the subchapter. Section 26.2 is adopted with changes to correct a reference in definition (3). New §26.3 provides nutrition requirements for el-

ementary schools including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. Section 26.3 is adopted with changes to correct a reference in subsection (c)(1)(E)(i)(III). New §26.4 provides nutrition requirements for middle and junior high schools, including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. Section 26.4 is adopted with changes to correct a reference in subsection (c)(1)(E)(i)(III). New §26.5 provides nutrition requirements for high schools, including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. New §26.6 provides requirements for the sale or use of foods of minimal nutritional value in schools. New §26.7 provides exemptions to the policy. New §26.8 provides requirements for schools to provide a healthy nutrition environment. New §29.9 is adopted with changes made by TDA at subsections (b), (c), and (e). The word "shall" is changed to "may" in the first sentence of subsection (b), the word "frequency" is added to the first sentence of subsection (c), and the word "additional" changed to "alternative" in that sentence. The changes are made to subsections (b) and (c) to allow TDA more flexibility in determining the appropriateness of a sanction, especially as it relates to minor violations. In subsection (e) the phrase "or program review" is added to the second sentence. The change to subsection (e) is adopted to clarify the circumstances under which a disallowance may be waived, and to make this section consistent with current practice. New §26.9 provides for consequences of non-compliance with the new sections, including a reference to TDA's appeal procedures for appealing a disallowance of meal reimbursements. The procedures found in subsection (h) of §26.9, are the appeal procedures used for this program. TDA is adopting by rule its appeal hearing procedures for its Food and Nutrition programs. The adoption is published in this edition of the *Texas Register.*

Numerous comments were received generally in support of the proposal by members of the Texas PTA. The Texas Pediatric Society also sent in comments supporting implementation of the proposed rules. Other, more substantive comments were received from individuals.

One commenter stated that the Texas Public School Nutrition Policy (TPSNP) should contain certain elements consistent with the 2005 USDA Dietary Guidelines for Americans (DGA). The commenter suggested 2 percent milk should be eliminated from the school menu, whole grain products should be increased, sodium levels should reflect the 2005 DGAs recommendation, fiber content should reflect the 2005 DGAs recommendation, cholesterol should be less than 100 mg at lunch and less than 75 mg at breakfast averaged over a week, and schools should plan meals that minimize trans-fats.

TDA will take this comment under consideration. While TDA supports improving nutrition standards for all foods served to students during the school day, and is proactive in assisting schools to move in that direction, it would not be prudent at this time to mandate the 2005 DGAs for school meals. The federal Child Nutrition programs will be undergoing reauthorization in Congress in 2009 and the United States Department of Health and Human Services will publish updated Dietary Guidelines in 2010. The National Institute of Medicine is currently in the process of writing school meal patterns that are more aligned with the most current dietary guidelines. Once this process is completed, the United States Department of Agriculture (USDA) will be directing state nutrition agencies on regulatory requirements. TDA will be communicating these requirements to all Texas school districts. These requirements will likely mandate several changes to school meal programs, including the possible aligning of all programs with the updated DGAs. Such changes will require additional training to school district staff and new memoranda being distributed. To streamline communication and minimize costs to school districts, TDA prefers to wait until after the new dietary guidelines are published before considering any potentially needed changes based on the DGA. TDA's Food and Nutrition Division evaluates compliance with requirements for cholesterol, dietary fiber, and sodium content in school meals via the school meal initiative reviews. Nutrient standards do not specify the required levels for each, however, the state agency evaluates these nutrients to ensure that they are decreasing or increasing over time. State promotion and assistance in getting schools to move towards the DGA's is also being accomplished through the USDA's Healthier United States School Challenge.

Another commenter stated they support the TPSNP, and would like to see continued limits on competitive foods in Texas schools and encourage TDA to provide for a future implementation schedule that will eventually remove all competitive foods from the school day in grades K-12. TDA will take this comment under consideration. With direction from its Healthy Students=Healthy Families advisory committee, TDA plans to continually review the TPSNP, and make revisions as necessary. Any revisions must also be developed with the input and coordination of all stakeholders. Another commenter stated they would like the TPSNP implemented into the school system. As a matter of clarification, all public school districts that participate in the National School Lunch or School Breakfast programs are currently required to abide by the TPSNP. While schools that do not participate in these programs do not have to adhere to the TPSNP, the majority of Texas schools do participate in these programs and, therefore, do adhere to the TPSNP. The adopted rules do require that all participants adhere to the TPSNP, however, this is not a new requirement.

Another commenter explained that since her son has started elementary school, he has not been offered healthy food, neither in classroom snacks nor in school lunches. Two related comments came from parents on the lack of healthy alternatives given to children at the elementary level. As a matter of clarification, all public school districts that participate in the National School Lunch or School Breakfast programs must abide by the TPSNP. The TPSNP regulates items served within and outside of reimbursable school meals. Those items outside reimbursable meals must abide by the portion size, fat content, and sugar content, and method of preparation requirements. Those items offered as part of a reimbursable meal by schools must meet minimum nutritional guidelines of one-third of the Recommended Dietary Allowance (RDA) of protein, calcium, iron, and vitamins A and C. No more than 30 percent of the meal's calories can come from fat, and no more than 10 percent can come from saturated fat. Another commenter stated the agency must do everything in its power to improve the quality of school lunches. TDA agrees with this comment. As the federal Child Nutrition Programs are reauthorized in Congress in 2009, efforts will be made to improve the nutritional quality of school lunches. TDA will follow guidance from the federal level in issuing direction to Texas school districts on related changes. TDA is also currently working with child nutrition professionals in the twenty education service centers across the state to provide training on meal acceptability and appeal. Additionally, TDA will rely on guidance

from its Healthy Students=Healthy Families advisory committee to improve all meals provided to students during the school day.

Another commenter suggested more needs to be done to educate parents, and that eating habits are formed at home. They also suggested increased nutrition education across curriculums. TDA agrees with this recommendation. Providing nutrition education and information to parents as well as students is a priority of Commissioner Staples and TDA. The Food and Nutrition division of TDA provides information through its Square Meals website and educational materials to students and parents. However, it is a goal of TDA to do more. In TDA's legislative appropriations request for the 2009 session, TDA is asking for $50 million in an exceptional item dedicated towards more nutrition education. Another commenter stated they encourage more stringent guidelines on the foods offered to children at school, and that children will eat foods that are healthy if given the opportunity to do so. TDA agrees with this comment. Through TDA's administration of the TPSNP and its guidance and training to school districts, students are being offered more healthy choices. Participation in the National School Lunch Program and the School Breakfast Program has increased since the TPSNP was first implemented.

The new sections are adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

§26.2. Definitions.

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

(1) A La Carte--Individually priced food items provided by the school food service department. These items may or may not be part of the reimbursable school meal.

(2) Competitive Foods--Foods and beverages sold or made available to students that compete with the school's operation of the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program. This definition includes, but is not limited to, food and beverages sold or provided in vending machines, in school stores or as part of school fundraisers. School fundraisers include food sold by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, or any other person, company or organization.

(3) FMNV--Foods of Minimal Nutritional Value. The four categories of foods and beverages (soda water, water ices, chewing gum, and certain candies) that are restricted by the U. S. Department of Agriculture under the child nutrition programs. See §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(4) Food Service--The school's operation of the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program and includes all food service operations conducted by the school principally for the benefit of schoolchildren and all of the revenue from which is used solely for the operation or improvement of such food services.

(5) Fried Foods--Foods that are cooked by total immersion into hot oil or other fat, commonly referred to as "deep-fat frying." This definition does not include foods that are stir-fried or sautéd.

(6) Fruit or Vegetable Drink--Beverages labeled as containing fruit or vegetable juice in amounts less than 100 percent.

(7) Fruit or Vegetable Juice--Beverages labeled as containing 100 percent fruit or vegetable juice.

(8) Reimbursable School Meal--A meal provided under the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program that meets all USDA requirements in accordance with all applicable federal regulations, policies, instructions, and guidelines and for which the schools receive reimbursement.

(9) School Day--The school day begins with the start of the first breakfast period and continues until the end of the last instruction period of the day (last bell).

(10) Snacks--Either competitive foods or a la carte, as defined in this section, depending on whether or not they are provided by the school food service department.

(11) Trans Fat--When manufacturers use hydrogenation, a process in which hydrogen is added to vegetable oil to turn the oil into a more solid (saturated) fat. Trans fats may be found in such foods as margarine, crackers, candies, cookies, snack foods, fried foods, baked goods, salad dressings, and other processed foods.

§26.3. Elementary Schools.

(a) Definition. For purposes of this subchapter, an elementary school campus is defined as any campus containing a combination of grades Early Elementary (EE) - 6. Kindergarten - grade 12 (K-12) schools may follow the requirements designated for middle and junior high schools in this subchapter.

(b) Foods of Minimal Nutritional Value (FMNV) Policy.

(1) Elementary school campuses may not serve or provide access for students to FMNV and all other forms of candy at any time anywhere on school premises until the end of the last scheduled class.

(2) FMNV may not be sold or given away to students on school premises by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, guest speakers, or any other person, company or organization. For exemptions and a listing of foods and beverages restrictions, see §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(c) Nutrition Standards. The following specific nutrition standards apply to all foods and beverages served or made available in reimbursable school meals, a la carte food items, and nutritious classroom snacks to students on elementary school campuses.

(1) Fats and Fried Foods.

(A) Schools and other vendors may not serve to students individual food items that contain more than 23 grams of fat with an exception of one individual food item per week.

(B) No individual food item can exceed 28 grams of fat at any time. This excludes peanut butter when served as part of a reimbursable school meal.

(C) Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals and a la carte foods. Schools that must make extensive equipment or facility changes must be in compliance by the 2009-10 school year or TDA must have approved a written waiver filed by school district no later than July 31, 2008, to extend the time to implement the equipment or facility changes.

(D) Foods that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(E) Potato products.

(i) French fries and other fried potato products that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(I) Servings must not exceed 3 ounces;

(II) Servings may not be offered more than once per week;

(III) Students may only purchase one serving at a time. (This does not pertain to potato chips, which are mentioned specifically in paragraph (2) of this subsection).

(ii) Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been pre-fried, flash-fried or par-fried in any way may be served without restriction.

(F) Schools must include a request for trans fat information in all product specifications.

(G) Schools must reduce the purchase of any products containing trans fats.

(2) Portion Sizes.

(A) The following maximum portion size and nutrient restrictions apply to all foods and beverages served or made available to students on school campuses with the exception of reimbursable school meals, which are governed by USDA regulations.
Figure: 4 TAC §26.3(c)(2)(A)

(B) This subchapter does not provide exceptions or phase-in periods for school districts with vending contracts.

(3) Other.

(A) Fruit and/or vegetables must be offered daily on all points of service.

(i) Fruits and vegetables should be fresh whenever possible.

(ii) Frozen and canned fruits should be packed in natural juice, water or light syrup whenever possible.

(B) Schools must offer 2 percent, 1 percent or skim milk at all points where milk is served.

(C) Elementary schools must serve only milk, unflavored water and 100 percent fruit and or vegetable juice.

(D) No electrolyte replacement beverages (sports drinks) may be served or sold.

(d) Competitive Foods and Snacks

(1) An elementary school campus may not serve competitive foods (or provide access to them through direct or indirect sales) to students anywhere on school premises throughout the school day until the end of the last scheduled class except for those food items made available by the school food service department.

(2) All foods, beverages and snack items must comply with the nutrition standards and portion size restrictions in this subchapter.

(3) Elementary classrooms may allow one nutritious snack per day under the teacher's supervision, but it may not be served during regular meal periods for that class. The snack may be provided by the school food service, the teacher, parents or other groups and should be at no cost to students.

(4) Prepackaged snacks must comply with fat and sugar limits of this subchapter, and must be single-size servings. No snacks (homemade and prepackaged) may contain any FMNV or consist of candy or dessert type items (cookies, cakes, cupcakes, pudding, ice cream or frozen desserts, etc.).

§26.4. Middle/Junior High Schools.

(a) Definition. For purposes of this subchapter, a middle school campus is defined as a campus containing grades 6, 7 and 8. A junior high school campus may contain either grades 7 and 8, or grades 7, 8 and 9. K-12 schools may follow this subchapter's requirements designated for middle and junior high schools.

(b) Foods of Minimal Nutritional Value (FMNV).

(1) Middle school and junior high school campuses may not serve or provide access for students to FMNV and all other forms of candy at any time anywhere on school premises until after the end of the last scheduled class.

(2) FMNV may not be sold or given away to students on school premises by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, guest speakers, or any other person, company or organization. For exemptions and a listing of foods and beverages restricted by the FMNV policy, see §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(c) Nutrition Standards. The following specific nutrition standards apply to all foods and beverages served or made available in reimbursable school meals, a la carte food items and competitive foods to students on middle and junior high school campuses.

(1) Fats and Fried Foods.

(A) Schools and other vendors may not serve individual food items that contain more than 23 grams of fat with an exception of one individual food item per week.

(B) No individual food item can exceed 28 grams of fat at any time. This excludes peanut butter when served as part of a reimbursable school meal.

(C) Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals, a la carte, snack lines, and competitive foods. Schools that must make extensive equipment or facility changes must be in compliance by the 2009-10 school year or TDA must have approved a written waiver filed by school district no later than July 31, 2008, to extend the time to implement the equipment or facility changes.

(D) Foods that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(E) Potato products.

(i) French fries and other fried potato products that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(I) Servings must not exceed 3 ounces;

(II) Servings may not be offered more than three times per week;

(III) Students may only purchase one serving at a time. (This does not apply to potato chips, which are mentioned specifically in paragraph (2) of this subsection relating to Portion Sizes).

(ii) Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been pre-fried, flash-fried or par-fried in any way may be served without restriction.

(F) Schools must include a request for trans fat information in all product specifications.

(G) Schools must reduce the purchase of any products containing trans fats.

(2) Portion Sizes.

(A) The following maximum portion size and nutrient restrictions pertain to all foods and beverages served or made available to students on school campuses with the exception of reimbursable school meals, which are governed by USDA regulations.
Figure: 4 TAC §26.4(c)(2)(A)

(B) This subchapter does not provide exceptions or phase-in periods for school districts with vending contracts.

(3) Other.

(A) Fruit and/or vegetables must be offered daily on all points of service.

(i) Fruits and vegetables should be fresh whenever possible.

(ii) Frozen and canned fruits should be packed in natural juice, water or light syrup whenever possible.

(B) Schools must offer 2 percent, 1 percent or skim milk at all points where milk is served.

(d) Competitive Foods.

(1) A middle or junior high school campus may not serve competitive foods (or provide access to them through direct or indirect sales) to students anywhere on school premises from 30 minutes before to 30 minutes after meal periods except for those food items made available by the school food service department.

(2) All foods, beverages and snack items must comply with the nutrition standards and portion size restrictions in this subchapter.

§26.9. Compliance and Penalties.

(a) The Texas Department of Agriculture (TDA) will enforce and diligently monitor schools to ensure compliance with this subchapter.

(b) If TDA determines that a school has violated this subchapter, TDA may disallow meal reimbursement for the day on which the violation occurred and require the school to reimburse the food service account for the disallowed reimbursement.

(c) TDA may, depending on the nature, frequency and severity of the violation, impose alternative sanctions on the school or school district, including disallowance of all meal reimbursements to the school district for the four-week period immediately preceding the day of the violation(s).

(d) TDA may interview school staff and collect evidence to determine the longevity and severity of the violation(s).

(e) TDA may waive a disallowance of meal reimbursement for the violation if the disallowance does not exceed $600. Such a disallowance may be waived for each on-site visit or program review within the school year.

(f) School districts must comply with a documented corrective action plan, approved by TDA. TDA will monitor the school district to ensure compliance with the corrective action plan.

(g) A school district will be notified, in writing, when meal reimbursements are disallowed due to violations of this subchapter.

(h) School districts may appeal disallowance of meal reimbursements in accordance with the requirements set forth in this subsection and TDA's appeal hearing procedures for the Food and Nutrition Programs located in Chapter 1, Subchapter P, Division 6, §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(1) School district appeal of TDA findings. A school district may request an administrative review of a denial of all or a part of a disallowance of meal reimbursements arising from the results of a comprehensive on-site evaluation or follow-up activity conducted by TDA under this subchapter. Procedures include the following requirements:

(A) school districts are assured a fair and impartial hearing before an independent official at which they may be represented by legal counsel;

(B) decisions will be rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review;

(C) school districts are afforded the right to either an administrative review of the record with the right to file written information, or a hearing which they may attend in person; and

(D) adequate notice is given of the time, date, place, and procedures of the hearing.

(2) Request for administrative review. School districts must use the following procedures to request an administrative review (appeal) of action subject to review described in paragraph (1) of this subsection.

(A) Action subject to administrative review. The only action subject to administrative review is the fiscal action disallowing meal reimbursements from the results of a comprehensive on-site evaluation or follow-up activity conducted by TDA under this subchapter.

(B) Procedures for requesting an administrative review (appeal). The following procedures shall apply when a school district requests an administrative review (appeal) of an action subject to appeal under this subsection:

(i) Notice of denial. A school district shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the school district may request an administrative review of the action.

(ii) Request for administrative review. The request for an administrative review shall be submitted in writing and postmarked not later than fifteen (15) days after the date the notice of denial is received. The request for review shall also clearly identify the action being appealed, and include a photocopy of the notice of denial. TDA shall acknowledge the receipt of the request for a review within ten (10) days of its receipt of the request.

(iii) Representation. The school district may retain legal counsel, or may be represented by another person.

(iv) Review of record. Any information on which TDA's action was based shall be available to the school district for inspection from the date of receipt of the request for an administrative review.

(v) Opposition. The school district may refute the findings contained in the notice of denial in person or by submitting written documentation to the Administrative Review Official (ARO). In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of denial.

(vi) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the school district requests a hearing in the written request for an administrative review. The rules and procedures for a hearing for appeals under this subchapter are found in §§1.1050 -1.1053 of this title.

(vii) Basis for decision. The ARO shall make a determination based on information provided by TDA and the school district, and on Program regulations.

(viii) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA and the school district of the determination of the ARO. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(ix) Final decision. The determination made by the ARO is the final administrative determination afforded to the school district and shall take effect upon receipt of the written notice of the final decision by the school district.

(x) Record of result of reviews. TDA shall maintain searchable records of all administrative reviews and their disposition for (3) three years from the date of the final decision.

(xi) Effect of State agency action. TDA's action shall remain in effect during the appeal process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 75. CURRICULUM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001 - 75.1003, 75.1005

The Texas Education Agency adopts amendments to §§75.1001 - 75.1003 and 75.1005, concerning driver education. The amendments are adopted without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9174) and will not be republished. The sections address driver education standards of operation for public schools, education service centers, and colleges or universities. The adopted amendments update statutory references and incorporate changes to driver education course requirements.

The Texas Education Code (TEC), §7.021 and §29.902, require the TEA to develop a program of organized instruction in driver education and traffic safety for public school students. Rules in 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities, were adopted to be effective January 1, 2000, to implement statutory requirements for the program. Subchapter AA sets forth requirements for driver education, including rules relating to administration and supervision, driver education teachers and teaching assistants, and course requirements. In accordance with statute and rule, the TEA also developed and made available sample instructional modules in a model course curriculum entitled the *Texas Driver and Traffic Safety Education Master Curriculum Guide*, dated October 2000.

The TEA conducted its statutorily-required review of rules in 19 TAC Chapter 75 in 2007 and identified the need for changes in Subchapter AA to update statutory references, including changes to reflect the re-codification of driver and traffic safety laws from Texas Civil Statutes to the TEC, Chapter 1001. In addition, from July 2006 to February 2007, input for updates to the program of organized instruction was solicited from instructors, teachers, parents, advocates, school districts, education service centers, colleges and universities, and other state agencies, including the Texas Department of Public Safety. The updated program of organized instruction, which incorporates input from stakeholders, is reflected in new instructional modules developed by the TEA entitled the *Program of Organized Instruction for Driver Education and Traffic Safety*, dated 2008.

The adopted amendments to 19 TAC Chapter 75, Subchapter AA, update statutory references and incorporate changes to driver education course requirements, as follows.

Section 75.1001, Administration and Supervision, is amended to delete references to specific sections within the Alcohol Beverage Code and the Health and Safety Code in subsection (b)(6).

Section 75.1002, Driver Education Teachers, is amended to delete references to specific sections within the Alcohol Beverage Code and the Health and Safety Code in subsection (d)(1). A technical edit is also made to correct word usage in subsection (d)(1).

Section 75.1003, Teaching Assistants, is amended in subsections (a)(1)(C), (a)(2)(B), and (d) to reference the TEC, Chapter 1001, rather than the Texas Civil Statutes due to the re-codification. References to specific sections within the Alcohol Beverage Code and the Health and Safety Code are deleted in subsection (g)(1). A technical edit is also made to correct word usage in subsection (g)(1).

Section 75.1005, Course Requirements, is amended to reflect the changes to the program of organized instruction and to ensure school district compliance with the revised standards. Specifically, subsection (c) is revised to incorporate the driver education instructional objectives established by the commis-

sioner, which meet the requirements in the TEC, §7.021 and §29.902, while incorporating industry requests. The instructional objectives are established in rule and the specific module titles are updated accordingly. Sample modules may be obtained from the TEA.

The TEA determined that there may be adverse economic impact for small businesses and microbusinesses. The TEA estimates that between 101-500 small businesses and between 1-100 microbusinesses (businesses with fewer than 20 employees) would be impacted for expenses related to compliance costs. The estimated cost to each driver training school providing the course is $2,000 in fiscal year 2009, $1,000 in fiscal year 2010, and $500 each year in fiscal years 2011-2013. The estimated costs would be to revise driver education curriculum to comply with the revised standards in the *Program of Organized Instruction for Driver Education and Traffic Safety*. Approximately 294 driver training schools provide the driver education course. Microbusinesses would be no more adversely impacted than small businesses.

In accordance with Texas Government Code, §2006.002, the TEA assessed alternatives to the proposed rule action that would diminish the impact on small businesses and microbusinesses. The first alternative assessed was to not adopt the rule. This is not an option because establishment of standards is required by the TEC, §7.021 and §29.902. Another alternative considered was to exempt small businesses and microbusinesses from the rule. This is not an option because each student eligible to enroll in a driver education course must have the opportunity to receive equivalent instruction regardless of the driver education provider they choose. As all driver education providers are required to provide the driver education course standards as established in rule, the third alternative considered is the TEA development of sample instructional modules. Small businesses and microbusinesses may obtain the sample instructional modules from the TEA to diminish the impact on curriculum development. Therefore, the TEA has considered several alternative methods that would diminish the impact on small businesses and microbusinesses and that analysis resulted in one option, the third alternative, providing regulatory flexibility on this matter.

The public comment period on the proposal began on November 14, 2008, and ended December 15, 2008. No public comments were received regarding the proposed amendments.

The amendments are adopted under the TEC, §7.021 and §29.902, which authorize the TEA to develop a program of instruction in driver education and traffic safety for public school students.

The adopted amendments implement the TEC, §7.021 and §29.902.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

19 TAC §§89.1501 - 89.1503, 89.1505, 89.1507, 89.1509, 89.1511

The Texas Education Agency (TEA) adopts amendments to §89.1501 and §89.1502 and new §§89.1503, 89.1505, 89.1507, 89.1509, and 89.1511, concerning the Communities In Schools (CIS) program. Sections 89.1501, 89.1502, 89.1503, 89.1505, 89.1507, and 89.1511 are adopted with changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6261). Section 89.1509 is adopted without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* and will not be republished. Sections 89.1501 and 89.1502 establish definitions and the funding formula for local CIS programs. The adopted amendments and new sections implement the requirements of the Texas Education Code (TEC), §33.154, as amended by House Bill (HB) 1609, 80th Texas Legislature, 2007, which requires the commissioner of education by rule to develop and implement policies concerning the program.

The CIS program is a statewide youth dropout prevention program that uses a case management model to serve students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis. Through 19 TAC Chapter 89, Subchapter EE, adopted to be effective July 4, 2005, the commissioner exercised rulemaking authority to establish definitions and an equitable funding formula for local CIS programs, in accordance with the TEC, §33.156.

HB 1609, 80th Texas Legislature, 2007, amended the TEC, §33.154, requiring the commissioner to adopt rules to implement policies concerning the responsibility of the TEA in encouraging local businesses to participate in local CIS programs, the responsibility of the TEA in obtaining information from participating school districts, and the use of federal or state funds available to the TEA for programs of this nature.

The commissioner is also required to establish state performance goals, objectives, and measures for the program that include improvement in student behavior and academic achievement as well as promotion, graduation, retention, and dropout rates. TEC, §33.154, gives the commissioner authority to withhold funding from programs that consistently fail to achieve the performance goals, objectives, and measures.

In addition to rule action required by HB 1609, staff in the TEA division responsible for state funding identified changes needed to the current process for the allocation of financial resources. The recommended changes are included in the adopted revisions.

The revisions to 19 TAC Chapter 89, Subchapter EE, amend the two existing rules and add new rules as follows.

Section 89.1501, Definitions, was amended to add definitions for case-managed student, eligible student, and local CIS program. Definitions for fully-developed program and funding formula were deleted. Other existing definitions were modified for clarification. Technical edits were made at adoption to clarify the definitions for case-managed student and eligible student in paragraphs (1) and (4), respectively.

Section 89.1502, Funding, was amended to specify that the current funding formula would continue to apply to the CIS program prior to school year 2009-2010. This amendment provides clarification that the current funding process will be maintained for the 2008-2009 school year. The section title was also updated accordingly. Minor technical edits were made at adoption in subsections (e) and (f) to clarify wording.

Section 89.1503, Funding Beginning with School Year 2009-2010, was added to establish funding allocations to local CIS programs that include the distribution of financial resources in line with weighted average daily attendance (WADA).

In response to public comments, the following changes were made to §89.1503 at adoption.

Language was added to subsection (c)(3)(A) to clarify the calculation of the funding allocation and revised in subsection (c)(3)(B) to include the specific steps used to determine the financial resources allocation.

Language was deleted in subsection (c)(4) to minimize any disruption in services due to annual changes in estimated funding allocations.

Language was modified in subsection (d) to specify that should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

Language was modified in subsection (d)(2) to clarify how the TEA may determine a funding amount for expansion and in subsection (d)(2)(A) to clarify how programs may use those funds when they are received.

A minor technical edit was made in subsection (g).

Adopted new sections were added to the subchapter to address provisions for grant application eligibility (§89.1505), determination of the number of case-managed students each local CIS program will serve (§89.1507), and provisions for encouraging local business participation and obtaining information from participating school districts (§89.1509). A new section was also added to establish performance standard expectations and revocation of grant award (§89.1511).

Technical edits were made at adoption to §89.1505, Eligibility and Grant Application, to correct wording in subsection (a)(1). Technical edits were also made in subsection (c) to correct wording and reflect a title change to another referenced rule.

In response to public comment, §89.1507, Case-Managed Students, was modified at adoption in subsection (c) by removing paragraph (3). Related language was added to §89.1503(c)(3)(B)(iii)(III) to clarify how the number of eligible students served will impact local program funding.

No changes were made to §89.1509, Other Provisions, since published as proposed.

In response to public comments, §89.1511, Performance Standards and Loss of State Grant Funding, was modified at adoption. New subsection (d)(4) was added to specify that the TEA may use funds that become available because of grant revocation for replication and/or expansion. New subsection (d)(5) was added to specify when a program whose grant has been non-renewed or revoked is eligible to reapply for replication funding. The section title was also updated accordingly at adoption for clarification.

Due to rule text changes made at adoption in response to public comment, the TEA re-assessed fiscal implications. The following fiscal impact statement has been updated since published as proposed.

The TEA has determined that there are no additional costs to the state or persons required to comply with the adopted rule action. While the overall statewide allocation has not changed, there will be a minor fiscal impact for local government. The amount of potential costs or savings for school districts is unknown. CIS programs are nonprofit organizations that partner with local school districts to provide services to help students stay in school. Amendments to the funding formulas align the formulas more closely with statute, and these amendments may cause increases or decreases to program funding. The factors in the formula that may impact funding amounts are the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs, and the weighted financial resources of the individual communities and school districts. It is estimated that some school districts will see an increase or decrease of less than 25 percent of funds currently allocated. Language has been modified at adoption in 19 TAC §89.1503(c)(4) which describes steps the TEA may take to help minimize disruption in services as a result of changes in funding allocation. Although funds are not provided to school districts directly, school districts benefit from the services provided by CIS programs. School districts that are partnered with CIS programs that lose a portion of funding may choose to provide additional funding to the program by either raising funds locally or redirecting school district budget funds.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposed rules began August 8, 2008, and ended on September 8, 2008. Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program.

PERFORMANCE MEASURES AND LOSS OF FUNDING

Comment. CIS of East Texas, CIS of South Central Texas, and CIS of Texas Association commented that as the TEA promulgates rules related to accountability of CIS programs at the local level, the agency should take into account the type of students being served by CIS programs. The same entities also suggested that TEA should base its performance standards upon the performance expectations put forth by school districts for CIS programs, based on local needs and interests.

Agency Response. The agency agrees. As specified in §89.1511(b), all performance standards related to academic

achievement, attendance, behavior, dropout rate, graduation, and promotion/retention will be established in each local CIS program's grant application each year. Each local CIS program will establish these standards, in coordination with the agency, based on the state's goals and objectives and the local program's prior year performance. One exception to this is the performance standard related to the number of case-managed students served. This performance standard is established by the Legislative Budget Board.

Comment. CIS of East Texas, CIS of South Central Texas, and CIS of Texas Association commented that the agency should clearly define how CIS program funds will be redistributed should a local program's grant award be revoked or non-renewed.

Agency Response. The agency agrees. Language in §89.1503(d) was modified at adoption to clarify that should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion. In addition, §89.1511(d) was modified by adding new paragraph (4) to specify that revoked funds may be used for CIS program replication and/or expansion in accordance with §89.1503(d). Section 89.1511(d) was also modified by adding new paragraph (5) to specify that a program whose grant has been non-renewed or revoked is eligible to apply for replication funding in accordance with §89.1503(d) after one year from the fiscal year the grant was non-renewed or revoked.

FUNDING FOR EXPANSION OF PROGRAMS

Comment. CIS of Southeast Harris County, CIS of Bell-Coryell Counties, CIS of Brazoria County, CIS of Central Texas, CIS of the Heart of Texas, CIS of Northeast Texas, CIS of East Texas, and Copperas Cove Independent School District (ISD) commented that the funding method described in proposed §89.1503(d)(2)(A) related to funding for the expansion of CIS programs was an inequitable method for allocating expansion funding and favored those CIS organizations that serve districts with large populations of eligible students. CIS of the Heart of Texas also commented that this funding method would reward CIS programs that serve small numbers of schools in as many large districts as possible.

Agency Response. The agency disagrees. CIS programs that serve larger school districts have larger numbers of eligible students to be served and, therefore, warrant a larger amount of funding for expansion. However, several changes have been made to §89.1053 at adoption to help clarify how programs may use expansion funds when they are received. The agency has removed from subsection (d)(2)(A) the expansion funding calculation language regarding the relative proportion of the number of eligible students attending new school districts to be served because it is not possible to anticipate what new districts a program might serve. To address concerns that programs may receive funding for large districts they intend to serve but do not end up serving, the agency has added language in subsection (d)(2)(A) to clarify that funds provided to local programs for expansion must be used to serve the district(s) for which the program received expansion funding. The agency has also added language to subsection (d)(2) to clarify how the agency may determine and retain a funding amount for expansion of the CIS program.

Comment. CIS of Southeast Harris County, CIS of Bell-Coryell Counties, CIS of Brazoria County, CIS of Central Texas, CIS of Bay Area, and Copperas Cove ISD commented that funding for the expansion of CIS programs should not be awarded on a competitive basis.

Agency Response. The agency disagrees. There are several options under §89.1503(d) for distributing expansion funds, including basing the amount to be awarded to local CIS programs on either the relative proportion of eligible students attending school districts served, the relative proportion of total case-managed students, or the relative proportion of grant funding allocated to programs. Issuing a competitive request for applications is another option for distributing expansion funds. The competitive grant application process is an appropriate method for selecting local CIS programs to expand into underserved areas of the state. This process allows local CIS programs to develop proposals and budgets that demonstrate how they will provide services to the targeted population, including how they will implement special initiatives to serve specific populations, maintain grant compliance, and achieve local performance targets.

FUNDING ALLOCATION

Comment. CIS of Southeast Harris County, CIS of Bell-Coryell Counties, CIS of Brazoria County, CIS of Central Texas, CIS of East Texas, CIS of South Central Texas, CIS of Bay Area, and CIS of Texas Association commented that the base amount of funds received by local CIS programs should be increased to $300,000 for each program if the legislature appropriates additional funding for CIS.

Agency Response. The agency disagrees. An equal base amount of funds, as determined by the TEA, will be awarded each year to local CIS programs, as specified in §89.1503(c)(1). The exact dollar figure for this base amount of funding is not specified in rule since funding may increase or decrease if the state appropriation for CIS increases or decreases.

Comment. CIS of Bay Area commented that §89.1503(c) needs further clarification so that local CIS programs can have adequate data to develop a funding plan to ensure that level service is maintained. The commenter stated that the funding criterion appears to be based on both a weighted proportion of financial resources and on the entire district that is served by a CIS organization.

Agency Response. The agency agrees. Section 89.1503(c)(3) was modified at adoption to clarify the calculation of the funding allocation. The TEA will make available estimated funding allocations in June of each year. In addition, §89.1503(c)(4) was modified at adoption to specify that the agency may limit the increase or decrease from the prior-year funding to an amount no more than 25 percent to minimize the disruption in services.

Comment. CIS of Bay Area commented that §89.1503(c)(2), which relates to the percentage of funding based on the relative proportion of case-managed students to be served by each local CIS program, should be set at 80 percent.

Agency Response. The agency disagrees. Without an increase in funding, changing the calculation to 80 percent will significantly impact some local CIS programs' funding by more than 25 percent, causing a disruption in services. Providing a range between 50 and 80 percent allows the agency to respond to potential changes in state funding allocations for CIS without having to substantially change the base funding levels for local CIS programs. In addition, the agency has removed language relating to the ratio of grant funding allocation from §89.1507(c)(3) and added similar language to §89.1503(c)(3)(B)(iii)(III) to clar-

ify how the number of eligible students served will impact local program funding.

Comment. CIS of Southeast Harris County, CIS of East Texas, CIS of Bell-Coryell Counties, CIS of Brazoria County, CIS of Central Texas, CIS of South Central Texas, CIS of Texas Association, and Copperas Cove ISD commented that the weighted financial resources allocation described in §89.1503(c)(3)(B) should not average the resources of all the communities within the CIS program area, as this method of calculation unfairly penalizes CIS programs that have one wealthy school district within an otherwise economically disadvantaged service area. Additionally, CIS of East Texas commented that 4 programs receive 70 percent of the funding set aside for the weighted financial resources allocation.

Agency Response. The agency disagrees that the averaging method delineated in rule is unfair. This calculation is based on the average taxable property value per weighted average daily attendance (WADA) in a program's service area. This calculation determines which local CIS programs are serving the poorest areas with the highest-need students.

Comment. CIS of Bay Area commented that §89.1503(c)(3) was not clear and that it was difficult to tell whether a program that serves a poor school district would receive funds.

Agency Response. The agency agrees. Additional language has been added at adoption to §89.1503(c)(3)(A) and (B) to clarify the calculation of the financial resources allocation. A local CIS program with a below-average wealth per WADA, as determined by taxable property values, WADA, and the number of eligible students at the campus level, will receive weighted financial resources.

The amendments and new sections are adopted under the TEC, §33.154, which authorizes the commissioner to adopt rules to implement policies concerning the Communities In Schools program, and §33.156, which authorizes the agency to develop and implement an equitable formula for the funding of local Communities In Schools programs.

The adopted amendments and new sections implement the TEC, §§33.151, 33.152, and 33.154-33.159.

§89.1501. Definitions.

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

(1) Case-managed student--A student who is assessed to be in need of Communities In Schools (CIS) services to address academic, attendance, behavior, retention, graduation, or social service needs according to the requirements in the grant application.

(2) Communities In Schools program--The statewide exemplary youth dropout prevention program authorized under the Texas Education Code (TEC), Chapter 33, Subchapter E (Communities In Schools Program).

(3) Developing program--An entity funded through the replication process for the purposes of establishing and implementing a local CIS program within a four-year period following the requirements in the grant application.

(4) Eligible student--A student at risk of dropping out of school as defined under the TEC, §33.151(4)(A)-(C), or a student who exhibits delinquent conduct as defined by the Texas Family Code, §51.03.

(5) Expansion--The process of a local CIS program establishing CIS services on a new school campus or in a new school district or expanding services to serve additional students on existing campuses, resulting in an increase of students served.

(6) Fiscal year--A one-year period beginning on September 1 of a calendar year and continuing through August 31 of the next calendar year.

(7) Local CIS program--A Communities In Schools 501(c)(3) non-profit organization established in accordance with the program model and state guidelines authorized by state law to operate for the purposes stated in paragraph (2) of this section and meeting all the requirements in the grant application for establishing a local CIS program.

(8) Replication--The process of establishing a new local CIS program in an area of the state designated by the Texas Education Agency to be an area of critical need for a local CIS program.

(9) Special initiative--The implementation of a specialized activity to address dropout prevention within the context of the CIS model.

§89.1502. Funding Prior to School Year 2009-2010.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. The provisions of this section apply to funding of local CIS programs prior to school year 2009-2010. Local CIS program funding beginning with school year 2009-2010 shall be in accordance with provisions established in §89.1503 of this title (relating to Funding Beginning with School Year 2009-2010).

(b) Developing programs. Developing programs shall receive a specified funding amount each year for no more than four years, including the first-year start up funding, after which time they shall become fully-developed programs and their funding shall be determined by the funding formula established under subsection (c) of this section. Prior to the expiration of four years, a developing program may request to be considered as a fully-developed program in which the funding would then be determined under subsection (c)(1)-(3) of this section if approved by the TEA.

(c) Fully-developed programs. Fully-developed programs shall receive a specified funding amount each year to be allocated as set forth in paragraphs (1)-(3) of this subsection. The TEA may choose, for the purpose of minimizing disruption in services due to changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior year funding to an amount no less than 5.0% and no more than 25% of the change produced by this subsection and/or establishing minimum and maximum funding amounts. The TEA shall allocate an amount of funds available for distribution based on the following criteria:

(1) an equal base amount of funds, as determined by the TEA;

(2) no less than 50% nor more than 80% of the specified funding amount based on a ratio of the relative proportion of students contracted by the program relative to the total number of students contracted by all fully-developed CIS programs; and

(3) no less than 5.0% nor more than 15% of the specified funding amount on the basis of the weighted financial resources of the individual communities and school districts, if less than the state average.

(A) Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(i) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's contract;

(ii) students in membership, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract; and

(iii) the number of economically disadvantaged students, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract.

(B) Weighted financial resources of individual communities and school districts will be determined by:

(i) calculating the ratio of the number of economically disadvantaged students in each district divided by the total number of economically disadvantaged students in the program;

(ii) dividing the ratio of taxable property value of the district by the number of students in membership at the district;

(iii) multiplying the ratios calculated in clauses (i) and (ii) of this subparagraph for each district; and

(iv) summing the results of clause (iii) of this subparagraph for each program.

(d) CIS program replication and expansion. For program growth, the TEA may use any one or a combination of the following methods.

(1) Replication. The TEA may determine and retain a base funding amount for replication of the CIS program in areas of the state that are not served by a participating local CIS program. Replication funds shall be made available through a competitive request for application process. First-year replication funding may be a one-time planning grant for the development of a business plan. Any funds not used for replication may be used for expansion.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program using any one or a combination of the funding methods specified in subparagraphs (A)-(D) of this paragraph. Funds allocated for expansion will become part of the funding allocation.

(A) Proportion of at-risk students served. An amount determined by the TEA may be distributed to each individual CIS program based on the relative proportion of the number of at-risk students, as defined by the TEC, §29.081, attending school districts served or new districts contracted to be served by the respective program area compared to the number of at-risk students in all districts served by CIS.

(B) Proportion of total students contracted. An amount determined by the TEA may be distributed to each individual CIS program based on a ratio of the relative proportion of students contracted by the respective program relative to the total number of students contracted by all fully-developed CIS programs.

(C) Program allocation. An amount determined by the TEA may be distributed to each individual CIS program based on the ratio of the respective individual program's total allocation relative to the total amount allocated to all fully-developed CIS programs.

(D) Competitive process. Funds may be distributed through a competitive request for application process.

(e) Other funding. Should other funding sources become available for CIS, these funds may be made available for replication, expansion, and/or special initiatives and allocated through such processes as the TEA deems appropriate, to include the funding methods described in subsection (d) of this section.

(f) Special initiatives. The TEA may partner or contract with other agencies or entities for the purpose of CIS to implement specialized activities or programs that address dropout prevention. Selection of local CIS programs for participation in the initiative may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative. Local CIS programs will have the discretion of whether to participate in the special initiatives.

(g) Funding plan. Each local CIS program shall develop a funding plan which ensures that the level of service is maintained if state funding is reduced.

§89.1503. Funding Beginning with School Year 2009-2010.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. The provisions of this section apply to funding of local CIS programs beginning with school year 2009-2010.

(b) Developing programs.

(1) A developing program shall receive a funding amount each year for no more than four years, including the first-year start up funding.

(2) A developing program that has met all the requirements for establishing a local CIS program before the fourth year may request to be considered as a local CIS program for funding determined under subsection (c)(1)-(3) of this section if approved by the TEA.

(c) Allocation. Local CIS programs shall receive a funding amount each year to be allocated based on the following criteria:

(1) an equal base amount of funds, as determined by the TEA;

(2) no less than 50% nor more than 80% of the specified funding amount based on the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs; and

(3) no less than 5.0% nor more than 15% of the specified funding amount based on the weighted financial resources of the individual communities and school districts, if less than the average financial resources of all school districts participating in the program.

(A) Data elements used for calculation of the financial resources allocation. Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(i) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's current grant application;

(ii) weighted average daily attendance (WADA), as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application; and

(iii) the number of eligible students at the campus level, as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application.

(B) Method used for calculation of the weighted financial resources. Weighted financial resources of a local CIS program are calculated in the following way.

(i) The weighted average taxable property value per WADA (wealth per WADA) for all local CIS programs is determined by first multiplying the wealth per WADA for each district within the CIS program by the district's WADA, summing the results for all districts, and then dividing the resulting sum by the total WADA in the CIS program.

(ii) The average wealth per WADA for all CIS programs is then calculated.

(iii) A local CIS program with a below-average wealth per WADA receives weighted financial resources. The weighted financial resources for a local CIS program with a below-average wealth per WADA are calculated as follows.

(I) The weighted eligible students number is derived by dividing the eligible students number by the ratio of the local CIS program's wealth per WADA to the average program wealth per WADA.

(II) The weighted eligible students numbers for all programs with a below-average wealth per WADA are summed.

(III) The ratio of each individual program's weighted eligible students to the total weighted eligible students is applied to the total amount allocated for the financial resources allocation. This amount forms the program's financial resources allocation.

(4) The TEA may choose, for the purpose of minimizing disruption in services as a result of changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior-year funding to an amount no more than 25% of the change produced by the provisions of this subsection and/or by establishing minimum and maximum funding amounts.

(5) If there is no increase in the funds appropriated by the General Appropriations Act for the state CIS program, the TEA may choose to maintain CIS program funding allocations at the current level.

(d) CIS program replication and expansion. Should the legislature authorize an increase in the funds appropriated for the state CIS program or should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

(1) Replication. The TEA may determine and retain a funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive request for application process or through any other process the TEA deems necessary. First-year replication funding may be a one-time planning grant for the development of a business plan. Any funds not used for replication may be used for expansion.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program using any one or a combination of the funding methods specified in subparagraphs (A)-(D) of this paragraph, in addition to allocation of funds in accordance with subsections (c)(1) and (c)(3) of this section. Funds allocated for expansion will become part of the funding allocation.

(A) Proportion of eligible students. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of eligible students attending school districts served by the respective program to the number of eligible students in all districts served by the CIS program. Funds provided to local programs for expansion must be used to serve the district(s) for which the program received expansion funding.

(B) Proportion of total case-managed students. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of case-managed students as identified in the current year's grant application for each local CIS program to the total number of case-managed students for all CIS programs.

(C) Program allocation. An amount determined by the TEA may be distributed to each local CIS program based on the ratio of the total amount of grant funding allocated to the local CIS program to the total amount of grant funding allocated to all local CIS programs.

(D) Competitive process. Funds may be distributed through a competitive request for application process.

(E) Decline of expansion funds. If a local CIS program declines to accept grant funds for the expansion of a program, the total amount of grant funding available for expansion will be redistributed in accordance with this paragraph among local CIS programs participating in expansion activities.

(e) Use of federal or state funds. Pursuant to the TEC, §33.154(a)(7)(C), the TEA will make available to local CIS programs and developing programs information regarding state and federal grant opportunities.

(f) Other funding. Should other funding sources become available for CIS, these funds may be made available for replication, expansion, and/or special initiatives and allocated through such processes as the TEA deems appropriate to include the funding methods in subsection (d) of this section.

(g) Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative.

(h) Funding plan. Each local CIS program shall develop a funding plan that ensures that the level of service is maintained if state funding is reduced.

§89.1505. Eligibility and Grant Application.

(a) Applicants eligible to receive grant funds are:

(1) as specified in the Texas Education Code, §33.152, local Communities In Schools (CIS) programs established under the Texas Labor Code, Chapter 305, as it existed on August 31, 1999, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221b-9d, Vernon's Texas Civil Statutes); and

(2) developing programs as defined in §89.1501(3) of this title (relating to Definitions).

(b) A local CIS program or a developing program must submit a grant application each year in accordance with procedures established by the commissioner of education.

(c) To remain eligible for grant funding, a local CIS program or a developing program must meet all deadlines and requirements set forth in §89.1511 of this title (relating to Performance Standards and Revocation of Grant Award) and in the grant application.

§89.1507. Case-Managed Students.

(a) Each local Communities In Schools (CIS) program is required to serve each year a specific number of case-managed students, as defined in §89.1501(1) of this title (relating to Definitions). The specific number of case-managed students to be served will be identified in each annual grant application.

(b) Each local CIS program may be required to serve an increased number of case-managed students if the Texas Education Agency (TEA) receives an increase in the funds appropriated in the General Appropriations Act for the CIS program and/or if the performance measure related to the number of case-managed students served is increased.

(c) To determine an increase in the number of case-managed students to be served by each local CIS program, the TEA will use the number of case-managed students as determined in the current year's grant application and apply one of the following calculations:

(1) the relative proportion of the number of eligible students attending school districts served or to be served by the respective local CIS program to the number of eligible students in all districts served or to be served by all CIS programs; or

(2) the relative proportion of the specified number of case-managed students for the respective local CIS program as identified in the current year's grant application to the total number of case-managed students for all CIS programs.

§89.1511. Performance Standards and Revocation of Grant Award.

(a) Performance standards for a local Communities In Schools (CIS) program regarding the number of case-managed students served.

(1) A local CIS program that fails to serve the number of case-managed students indicated in its grant application by the end of the school year of any given year will receive grant funding based only on the number of case-managed students the program actually served in that given year.

(2) Following the end of a given school year (Year 1), a local CIS program that fails to serve the number of case-managed students identified in its grant application must submit to the Texas Education Agency (TEA) a letter of explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application. Additionally, a Program Improvement Plan (PIP) detailing how the CIS program will reach the Year 1 target by the end of the second school year (Year 2) is required. The PIP must include the following:

(A) local program contact information;

(B) the number of case-managed students listed in the grant application;

(C) the actual number of case-managed students served;

(D) a list of the proposed strategies and initiatives that will be implemented to meet the case-managed student target;

(E) a list of the timelines for each proposed strategy and initiative; and

(F) a list of fiscal, logistical, and human resources to be used to meet the case-managed student target.

(3) A local CIS program that fails to meet the Year 1 target for case-managed students in Year 2 will:

(A) receive payment only for the number of case-managed students the program actually served;

(B) have its grant application modified to reflect a decreased number of case-managed students and decreased funding for Year 3; and

(C) be placed on probation for Year 3.

(4) A local CIS program placed on probation:

(A) must update its PIP to show how it will modify its program to meet the Year 3 case-managed student target; and

(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its case-managed student target as a result of circumstances, such as a natural disaster, beyond the program's control.

(5) A local CIS program that fails to meet its Year 3 case-managed student target by the end of Year 3 may have its grant award non-renewed or revoked.

(6) A local CIS program that successfully reaches its Year 3 case-managed student target at the end of Year 3 will be removed from probation.

(7) A local CIS program may have its grant award non-renewed or revoked if it fails to meet its case-managed student target as identified in the grant application for four years out of a five-year period.

(b) Performance standards for a local CIS program regarding state targets in academic achievement, attendance, behavior, dropout rates, graduation, and promotion/retention.

(1) In accordance with the Texas Education Code (TEC), §33.154(a)(2), performance standards are established for local CIS programs in the objective areas of academic achievement, attendance, behavior, dropout rates, graduation, and promotion/retention.

(2) Each local CIS program must meet the performance standards stated in its grant application each year.

(3) The TEA shall notify local CIS programs that did not meet performance standards in any objective area, within a 5.0% variance, following the end of each school year.

(4) A local CIS program that fails to meet performance standard(s) in any objective area within a 5.0% variance must submit to the TEA a letter of explanation detailing the reasons the program was unable to meet state established performance standard(s). Additionally, a PIP detailing how the CIS program will reach the performance standard by the end of the next grant year period is required. The PIP shall include the following:

(A) local program contact information;

(B) a list of the objective area(s) and the performance standard(s) as listed in the grant application;

(C) a list of the actual standard(s) met for each objective area(s);

(D) a list of the proposed strategies and initiatives that will be implemented to meet the performance standard(s) that were not met;

(E) a list of the timelines for each proposed strategy and initiative; and

(F) a list of fiscal, logistical, and human resources to be used to reach the performance standard(s).

(5) The TEA will review PIPs within 30 days of receipt.

(6) A local CIS program that fails to meet performance standards for Year 2 or two consecutive years must submit an updated PIP for approval by the TEA and will be placed on probation for Year 3.

(7) A local CIS program placed on probation:

(A) must update its PIP to show how it will modify its program to meet the Year 3 performance standards; and

(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its performance standards as a result of circumstances, such as a natural disaster, beyond the program's control.

(8) A local CIS program that fails to meet its Year 3 performance standards by the end of Year 3 may have its grant award non-renewed or revoked.

(9) A local CIS program may have its grant award non-renewed or revoked if it fails to meet its performance standards as identified in the grant application for four years out of a five-year period.

(c) Performance standards for a developing program. A developing program that does not meet the requirements for establishing a local CIS program as specified in the request for application may have its grant funding non-renewed or revoked in accordance with subsection (d) of this section.

(d) Revocation of grant award.

(1) The commissioner may deny renewal or revoke the grant award of a local CIS program based on any of the following:

(A) failure to serve the number of case-managed students identified in its grant application for three consecutive years;

(B) failure to meet performance standards within a 5.0% variance as identified in the local CIS program's grant application for three consecutive years; or

(C) consistently failing to serve the target number of case-managed students and meet the performance standards within a 5.0% variance as identified in its grant application for four years out of a five-year period.

(2) The commissioner may deny renewal or revoke the grant award of a developing program based on any of the following:

(A) non-compliance with application assurances;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the developing program.

(3) A decision by the commissioner to deny renewal or revoke authorization of a grant award is final and may not be appealed.

(4) Revoked funds may be used for CIS program replication and/or expansion in accordance with §89.1503(d) of this title (relating to Funding Beginning with School Year 2009-2010).

(5) A program whose grant has been non-renewed or revoked is eligible to apply for replication funding in accordance with §89.1503(d) of this title after one year from the fiscal year the grant was non-renewed or revoked.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

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CHAPTER 176. DRIVER TRAINING SCHOOLS SUBCHAPTER CC. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF TEXAS DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS

19 TAC §§176.1201 - 176.1206, 176.1209 - 176.1211

The Texas Education Agency adopts amendments to §§176.1201 - 176.1206, 176.1209, and 176.1210, and new 176.1211, concerning driver training schools. The amendments and new section are adopted without changes to the proposed text as published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9179) and will not be republished. The sections establish minimum standards for operation of Texas drug and alcohol driving awareness programs. The adopted amendments and new rule update program requirements and statutory references and reflect changes requested by industry members.

Vernon's Texas Civil Statutes (VTCS), Article 4413(29c), §4A, relating to drug and alcohol driving awareness programs (DADAPs), was added by the 76th Texas Legislature, 1999. Rules in 19 TAC Chapter 176, Driver Training Schools, Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs, were adopted to be effective December 26, 1999, to implement statutory requirements for the program. Subchapter CC sets forth requirements relating to general provisions, definitions, school licensure and responsibilities, instructor licenses, programs of instruction, student enrollment forms, facilities and equipment, records, and application fees and other charges. The rules have not been amended since adoption.

VTCS, Article 4413(29c), §4A, was codified in the TEC as §1001.103 by the 78th Texas Legislature, 2003. The TEA conducted its statutorily-required review of rules in 19 TAC Chapter 176 in the fall of 2007 and identified the need for changes in Subchapter CC to bring rules into alignment with the TEC, §1001.103, which specifies that a DADAP must be offered in the same manner as a driving safety course. Statutory authority citations and references within the rules must be updated to reflect the re-codification of driver and traffic safety laws to the TEC, Chapter 1001. In addition, informal stakeholder discussions were held during summer and winter of 2007 with current DADAP owners. Input was also solicited from all driver training industry members.

The following adopted revisions to 19 TAC Chapter 176, Subchapter CC, update program requirements and statutory references and include changes requested by the driver training industry. The adopted revisions are allowed under the provisions of the TEC, §1001.053 and §1001.103.

Section 176.1201, General Provisions, is amended to clarify the applicability of rules in 19 TAC Chapter 176, Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers, to DADAPs.

Section 176.1202, Definitions, is amended to revise, add, and delete definitions. The adopted amendment clarifies what is meant by course provider, pre-program and post-program exam, driver training, clock-hour, program validation question, personal validation question, drug and alcohol driving awareness program, and drug and alcohol driving awareness school. The adopted amendment also adds language to the definition of "Good Reputation" that is consistent with driving safety rules and defines public and private schools for the purposes of Chapter 176, Subchapter CC.

Section 176.1203, Drug and Alcohol Driving Awareness School Licensure, is amended to update references and terms. The adopted amendment includes clarification regarding the effective date of licenses.

Section 176.1204, Drug and Alcohol Driving Awareness School Responsibilities, is amended to add new language to address provisions for course providers. The adopted amendment clarifies the responsibilities of the course provider and of the school that are consistent with the applicable driving safety rules. The section title is also updated.

Section 176.1205, Drug and Alcohol Driving Awareness Program Instructor License, is amended to incorporate updates to licensing requirements. The adopted amendment eliminates the requirement that a DADAP instructor maintain training or work experience within 36 months. This is consistent with the rules governing other driver training instructors. In addition, the adopted amendment specifies that instructors who want to add another DADAP endorsement to a license shall submit evidence of two additional hours of training from the course provider of the drug and alcohol driving awareness program curriculum that the instructor will be licensed to teach. The adopted amendment also includes a provision to allow the commissioner to revoke the license of an instructor who exhibits certain inappropriate behaviors. The section title is also updated.

Section 176.1206, Programs of Instruction, is amended to incorporate updates to standards for DADAPs and instructor development programs. The adopted amendment allows DADAP courses to be offered in languages other than English. The adopted amendment also increases the number of students in a DADAP class from 36 to 50. This class size is consistent with that approved for a driver safety course. In addition, the adopted amendment includes specific criteria for post-program exams. The section title is also updated.

Section 176.1209, Records, is amended to include reference to a course provider.

Section 176.1210, Application Fees and Other Charges, is amended to include the application, processing, and licensing fees for alternative delivery methods (ADMs).

New §176.1211, Alternative Delivery Methods of Drug and Alcohol Driving Awareness Program Instruction, is added to provide for ADMs for an approved DADAP course. This new section allows the commissioner to approve the method of delivery and instruction of drug and alcohol awareness program instruction electronically or over the Internet. ADM course providers will submit an application to the TEA for review and approval. The adopted new rule provides detailed criteria for an acceptable ADM program. The adopted criteria are consistent with the criteria already used for approval of ADMs of driving safety courses.

The TEA determined that there may be adverse economic impact for small businesses or microbusinesses. The TEA estimates that between 1-100 microbusinesses (businesses with fewer than 20 employees) could be impacted for expenses related to compliance costs. The estimated costs to the program owners and licensed schools are $20,000 in fiscal year 2009, $16,800 in fiscal year 2010, and $6,000 each year in fiscal years 2011-2013. The estimated costs are for application and approval costs that must be paid by program owners and licensed schools. In addition, there are annual costs associated with obtaining, assigning, tracking, and reporting certificates of program completion that will be borne by the program owners and licensed schools. The estimated costs for fiscal years 2009 and 2010 include the $9,000 application fee for an ADM plus ancillary costs involved in administration of such programs. Although the authority to assess and collect fees existed in the original and codified statutory language, the TEA had not previously proposed or collected such fees for ADMs for DADAP courses. Based on industry requests for closer regulation and the approval of ADMs for instruction, the TEA determined that it would be necessary to propose and collect fees for ADMs to ensure there would be no adverse fiscal impact on the state. The fees parallel those found in the driving safety industry, as required by language in the TEC, §1001.103, that reads, in part, "Except as provided by agency rule, a program must be offered in the same manner as a driving safety course." The TEA has determined that fees must be assessed to continue the mandate that the TEA division responsible for driver training be self-funded.

The TEA also determined that there may be further economic impact for small businesses or microbusinesses as a result of the rule action; however, there is not enough information available to determine whether there may be an increase in or loss of revenue because the concept of ADMs in DADAP courses is too new to make a determination. Some small and/or microbusinesses will experience losses or gains based on their business plan and follow through regardless of the rule action. The cost of compliance is less of a factor than the execution of a viable business plan. Microbusinesses would be no more adversely impacted than small businesses.

In accordance with Texas Government Code, §2006.002, the TEA conducted a regulatory flexibility analysis, assessed alternatives to the proposed new ADM rule to diminish the impact on microbusinesses, and determined the following. The changes are being made at the request of small businesses and microbusinesses. DADAP course providers will not be required to offer instruction through ADMs; therefore, the rule action will not affect small businesses or microbusinesses that do not choose to pursue ADMs. The rule actions will only affect businesses choosing to participate, and it is assumed that their costs will be covered by an income stream generated by the changes in the rule actions. Businesses involved will be allowed to provide classes over the Internet or other technology reducing labor costs by the amount paid normally to an instructor. This change also benefits students who currently do not have access to a school locally. Additionally, the TEA has not adopted all

of the same fees as those that exist in driving safety in order to have the least possible impact on small businesses and microbusinesses in Texas.

The public comment period on the proposal began on November 14, 2008, and ended December 15, 2008. No public comments were received regarding the proposed amendments and new section.

The amendments and new section are adopted under the TEC, §1001.053, which authorizes the commissioner of education to adopt and enforce rules necessary to administer driver and traffic safety education and to adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality. The TEC, §1001.103(b), authorizes the TEA to develop standards for a separate school certification and approve curricula for drug and alcohol driving awareness programs that include one or more courses. The statute also specifies that, except as provided by agency rule, a program must be offered in the same manner as a driving safety course. The TEC, §1001.103(e), provides that the commissioner may establish fees in connection with the drug and alcohol driving awareness programs that are reasonable and necessary to administer the agency's duties.

The adopted amendments and new section implement the TEC, §1001.053 and §1001.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900455
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: February 26, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.3

The Texas State Board of Dental Examiners (Board) adopts an amendment to §116.3(b), concerning the registration and renewal requirements of Texas dental laboratories. The amendment is adopted without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6270) and will not be republished.

The amendment is adopted to require a jurisprudence assessment be completed to ensure that dental laboratory owners understand Texas statutes and regulations regarding dental laboratories.

No comments were received regarding this amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted amendment affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900452
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 26, 2009
Proposal publication date: August 8, 2008
For further information, please call: (512) 475-0972

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22 TAC §116.6

The Texas State Board of Dental Examiners (Board) adopts the amendment of §116.6, concerning continuing education requirements of Texas dental laboratories. The amendment is adopted without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6247) and will not be republished. The amendment is adopted to update the continuing education requirements that certain dental laboratory employees must take in order be in compliance with recognized standards.

A comment was received from the Texas Dental Hygienists' Association recommending the addition of a CPR education requirement. However, due to limited patient contact by dental laboratories, the rule was adopted without changes.

The section is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Texas Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900456
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 26, 2009
Proposal publication date: August 8, 2008
For further information, please call: (512) 475-0972

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22 TAC §116.10

The Texas State Board of Dental Examiners (Board) adopts the amendment of §116.10, concerning prosthetic identification. The amendment is adopted to require dental laboratories to clearly label or certify in writing to the prescribing dentist the place of manufacture of a dental prosthetic. The amendment is adopted without changes to the proposed text as published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6271) and will not be republished.

No comments were received regarding this amendment.

The section is adopted under Texas Government Code §2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2009.

TRD-200900457
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 26, 2009
Proposal publication date: August 8, 2008
For further information, please call: (512) 475-0972

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.32

The Texas Board of Professional Geoscientists (Board) adopts an amendment to 22 TAC §851.32, regarding continuing education program. The amendment to §851.32 is adopted without changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8279).

The adopted amendment clarifies that continuing education activities will not be pre-approved or endorsed by the Board, but that it is the responsibility of each licensee to ensure their continuing education activities meet the requirements established by the Board.

No public comments were received regarding the adoption of this amendment.

This amendment is adopted under Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.302, which allows the Board to establish continuing education requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900409
Charles Horton
Interim Executive Director
Texas Board of Professional Geoscientists
Effective date: March 1, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 936-4405

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22 TAC §851.80

The Texas Board of Professional Geoscientists (Board) adopts an amendment to 22 TAC §851.80, regarding fees. The amendment to §851.80 is adopted without changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8281).

The adopted amendment allows licensees who are 65 years or older to retain their license at a reduced cost to them, ensuring that qualified and licensed persons and entities continue practicing geoscience before the public.

No public comments were received regarding the adoption of this amendment.

This amendment is adopted under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.152, which authorizes the Board to set reasonable and necessary fees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900410
Charles Horton
Interim Executive Director
Texas Board of Professional Geoscientists
Effective date: March 1, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 936-4405

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER W. COVERAGE FOR ACQUIRED BRAIN INJURY

28 TAC §§21.3101 - 21.3107

The Commissioner of Insurance adopts amendments to §§21.3101 - 21.3105 and new §21.3106 and §21.3107, concerning coverage for acquired brain injury. The amendments to §§21.3101, 21.3103 and new 21.3107 are adopted with changes to the proposed text published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6714). The amendments to §§21.3102, 21.3104, 21.3105, and new 21.3106 are adopted without changes.

REASONED JUSTIFICATION. These amendments and new sections are necessary to implement House Bill (HB) 1919, 80th Legislature, Regular Session, effective January 1, 2008. HB 1919 amended Insurance Code Chapter 1352, relating to required coverage for acquired brain injury. The amendments and new sections: (i) address expanded coverage of acquired brain injury provisions in health benefit plans to include coverage of post-acute care and cognitive rehabilitation for survivors of brain injuries; (ii) distinguish required coverage provisions that do not apply to small business health benefit plans and provide alternative coverage provisions that do apply to small business health benefit plans; (iii) specify the content of the statutorily required notification of coverage that health benefit plan issuers, other than small business health benefit plans, are required to annually provide to insureds or enrollees; and (iv) specify procedures for the distribution of the statutorily required notification of coverage. The amendments are also necessary to update statutory citations in existing rules to conform to the non-substantive revised Insurance Code. These updates are necessary for easier use and readability of the rules.

As required by §1352.005(b) of the Insurance Code, the notice included in adopted §21.3107 was prepared in consultation with the Texas Traumatic Brain Injury Advisory Council. The Department posted an informal working draft of the proposed amendments and new sections on the Department's internet website from June 11, 2008 to June 23, 2008. The Department formally proposed the amendments and new sections in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6714).

A public hearing on the rule proposal was held on September 25, 2008. In response to written comments on the published proposal and comments made at the hearing, the Department has changed some of the proposed language in the text of the rule as adopted. Additionally, this adoption includes minor editorial corrections in three provisions. None of the changes made to the proposed text, either as a result of comments or as a result of necessary clarification, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The following changes are made to the proposed text as a result of comments.

The Department has revised §21.3101(c)(1)(A) and (B) as adopted to specify that these rules apply to all health benefit plans delivered, issued for delivery, or renewed on or after March 31, 2009. Health benefit plans delivered, issued for delivery, or renewed prior to March 31, 2009 are subject to the statutes and rules in effect at the time the health benefit plans were delivered, issued for delivery, or renewed. The March 31, 2009 date is in lieu of the proposed October 31, 2008 applicability date. This change is the result both of a commenter objecting to the proposed applicability date of October 31, 2008, and as a result of the effective date of this adoption. According to the commenter, as proposed, the applicability date of October 31, 2008 would not have been a realistic date because it would not have provided sufficient time for health benefit plans to prepare for compliance with the new rules. The Department has determined that these rules will apply to all health benefit plans delivered, issued for delivery, or renewed on or after March 31, 2009. The Department believes that this will provide sufficient time for insurers to take the necessary action to comply with the new requirements. As a result of this change in the applicability date to March 31, 2009, the Department has also changed the date in §21.3107(c)(1)(A) and (B) for the distribution of the Insurance Code §1352.005 mandatory notice to insureds and enrollees. As adopted, §21.3107(c)(1)(A) and (B) read: "(1) The notice shall be provided during the policy term for the plan, and no later than: (A) March 31, 2009 to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date of this subchapter; or (B) the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of this subchapter." The proposed date for distribution of the notice was "no later than: (A) the 60th day after the effective date of this section to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the effective date of this section; or (B) the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the effective date of this section." Consistent with the intent of the proposal, the change in §21.3107(c)(1)(A) to "no later than March 31, 2009" is necessary to ensure that the notices will be distributed in a timely manner to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date. This change is necessary because of the necessary delay in applicability of the new rules to March 31, 2009. The references to "effective date" in proposed §21.3107(c)(1)(A) and (B) have been changed to "March 31, 2009 applicability date" for purposes of clarification and consistency in implementation.

Adopted §21.3103(d) has been revised to closely follow the statutory language of §1352.003(c) of the Insurance Code. As adopted, §21.3103(d) addresses lifetime payment limitations, deductibles, copayments, and coinsurance. Section 21.3103(d) as adopted: (i) prohibits a health benefit plan from subjecting the coverage required under the Insurance Code Chapter 1352 to payment limitations, deductibles, copayments, and coinsurance factors that are more restrictive than payment limitations, deductibles, copayments, and coinsurance factors applicable to other similar coverage provided under the health benefit plan; (ii) prohibits a health benefit plan that includes lifetime limitations on coverage required under the Insurance Code Chapter 1352 from including any post acute care treatment for such coverage in any lifetime limitation on the number of days of acute care treatment covered under the plan; and (iii) requires a health benefit plan to separately state in the plan any lifetime limitation imposed under the plan on days of post-acute care treatment for the coverage required under the Insurance Code Chapter 1352. These changes to §21.3103(d) are the result of a commenter who objected to proposed §21.3103(d)(2) as being inconsistent with §1352.003(c) of the Insurance Code. The commenter stated that the statute, at §1352.003(c), indicates that a carrier may not apply *lifetime* limitations regarding acute

care treatment to post-acute care treatment, but that there is no mention of *annual* limitations. The commenter asserted that the proposed rule added the term annual, despite the fact that the statute does not contain or authorize this prohibition. The commenter asserted that the use of generally applicable *annual* limitations is allowed by the statute and should not be prohibited by the rule.

The Department has also made non-substantive editorial changes to (i) re-locate a misplaced "and"; (ii) remove an incorrect comma; (iii) correct singular words that should be plural; and (iv) capitalize certain words. Adopted §21.3101(a)(2) and (3) have been revised to correct the placement of the word "and" in the paragraph (1) - (3) listings. As proposed, existing §21.3101(a)(4) was deleted because authority for the provision no longer exists. However, the "and" at the end of §21.3101(a)(3) was not removed, despite the fact that there would no longer be a fourth paragraph following §21.3101(a)(3). This inadvertent error has been corrected by placing the word "and" at the end of §21.3101(a)(2). The Department has also deleted an incorrect comma in §21.3107(c)(6) as adopted. Proposed §21.3107(c)(6) contained a comma between the words "or enrollees" and "if the health benefit plan issuer. . . ." Section 21.3107(c)(6) as adopted reads: "(6) For group health benefit plans, the notice may be provided to the group master contract holder for distribution to insureds or enrollees if the health benefit plan issuer has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in paragraph (1) of this subsection; however, the health benefit plan issuer will be held responsible for ensuring that the notice is provided to the insureds or enrollees." In §21.3101(a) as adopted, the words "purpose" and "is" in the introductory sentence have been changed to "purposes" and "are" to reflect the fact that there are multiple purposes stated in §21.3101(a). The introductory sentence in adopted §21.3101(a) reads: "(a) Purpose. The purposes of this subchapter are to: . . . ." The words "postal service" in §21.3107(c)(3) have been capitalized to read U.S. Postal Service."

A correction of error notice was published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7624) to add a colon that was inadvertently omitted after the word "not" in §21.3101(c)(2). In accordance with this notice, proposed §21.3101(c)(2) is adopted without changes and reads: "(2) Nothing in this subchapter requires the issuer of a health benefit plan to provide coverage for services that are not: medically necessary; clinically proven; goal-oriented; efficacious; based on an individualized treatment plan; or provided by, or ordered and provided under the direction of a licensed healthcare practitioner."

The following paragraphs provide a brief summary as well as an analysis of the reasons for the adopted amendments and new sections.

The adopted amendment to §21.3101(c)(1) is necessary to specify an applicability date for the adopted amendments and new sections. Adopted §21.101(c)(1)(A) and (B) specify that, except as otherwise specified within the subchapter, these rules apply to all health benefit plans delivered, issued for delivery, or renewed on or after March 31, 2009. Health benefit plans delivered, issued for delivery, or renewed prior to March 31, 2009, are subject to the statutes and rules in effect at the time the health benefit plans were delivered, issued for delivery, or renewed. The Department anticipates that the March 31 applicability date will provide sufficient time for insurers to take the necessary action to comply with the new requirements, including preparing to provide the notice required by §21.3107.

The adopted amendments to §21.3102 are necessary to add definitions for the terms "outpatient day treatment services" and "post-acute care treatment services" in paragraphs (18) and (19). These are terms used in the new rules and in Chapter 1352 of the Insurance Code. The adopted amendments also redesignate the remaining definitions accordingly.

The adopted amendments to §21.3103 are necessary to expand the section, adding new subsections, paragraphs, and subparagraphs, in order to implement provisions of HB 1919 related to required coverage for acquired brain injury. Additionally, adopted amendments are necessary to re-organize existing subsections into paragraphs and subparagraphs for purposes of better organization and clarity of the adopted and existing rules. Subsection titles are adopted to assist in organization and provide clarity.

Section 21.3103(a) addresses required coverage for an acquired brain injury in accordance with Chapter 1352 of the Insurance Code. The adopted amendment to §21.3103(a) is necessary to add "outpatient day treatment services or other post-acute care treatment services" to the types of required coverage. This type of coverage is required by the Insurance Code §1352.003, as amended by HB 1919.

Section 21.3103(b) addresses medically necessary and appropriate treatments and services for an acquired brain injury in accordance with Chapter 1352 of the Insurance Code. The reorganization of §21.3103 and the expansion of the subchapter to implement HB 1919 results in the use of the terms "necessary" and "medically necessary" in other rules within the subchapter in addition to §21.3103(a). Therefore, the adopted amendment to §21.3103(b)(1) is necessary to change the reference to "subsection (a) of this section" to "this subchapter." The adopted amendment to §21.3103(b) that adds new paragraph (2) is necessary to prohibit health benefit plans from denying benefits for the coverage required under Chapter 1352 of the Insurance Code based solely on the fact that the treatment or services are provided at a facility other than a hospital. Adopted §21.3103(b)(2) is also necessary to mandate that medically necessary treatment and services for an acquired brain injury must be provided under the coverage required by Chapter 1352 at a facility at which appropriate services may be provided. Additionally, new §21.3103(b)(2)(A) and (B) are necessary to specify examples of such facilities in accordance with the Insurance Code §1352.007(a)(1) and (2).

Section 21.3103 addresses maintenance, prevention, and reevaluation of care. The adopted amendment to §21.3103(c)(1) is necessary to specify that the source of the mandated coverage is the Insurance Code Chapter 1352. In accordance with the Insurance Code §1352.003(e), adopted new §21.3103(c)(2) provides that a health benefit plan must include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who has incurred an acquired brain injury, been unresponsive to treatment, and becomes responsive to treatment at a later date. In accordance with the Insurance Code §1352.003(f), adopted §21.3103(c)(2) specifies five factors that are to be used in determining whether expenses related to periodic reevaluation of care are reasonable and must be covered.

Section 21.3103(d) addresses lifetime payment limitations, deductibles, copayments, and coinsurance. Adopted new

§21.3103(d)(1) is necessary to prohibit a health benefit plan from subjecting the coverage required under the Insurance Code Chapter 1352 to payment limitations, deductibles, copayments, and coinsurance factors that are more restrictive than payment limitations, deductibles, copayments, and coinsurance factors applicable to other similar coverage provided under the health benefit plan. Adopted new §21.3103(d)(2) is necessary to prohibit a health benefit plan that includes lifetime limitations on coverage required under the Insurance Code Chapter 1352 from including any post acute care treatment for such coverage in any lifetime limitation on the number of days of acute care treatment covered under the plan. Adopted new §21.3103(d)(3) is necessary to require a health benefit plan to separately state in the plan any lifetime limitation imposed under the plan on days of post-acute care treatment for the coverage required under the Insurance Code Chapter 1352. These provisions closely follow the statutory language of §1352.003(c) of the Insurance Code. Section 1352.003(c) of the Insurance Code states that a carrier may not apply *lifetime* limitations regarding acute care treatment to post-acute care treatment.

Section 21.3103(e) addresses other coverage limitations. The adopted amendment to §21.3103(e) is necessary to reflect that the source of the mandated coverage is the Insurance Code Chapter 1352.

Section 21.3103(f) addresses permitted coverage exclusions. One of the adopted amendments to §21.3103(f) is necessary to clarify that the term that is defined in §21.3102 is "neurofeedback therapy" rather than the existing referenced term "neurofeedback." The adopted amendments to §21.3103(f) are also necessary to specify that the source of the mandated coverage is the Insurance Code Chapter 1352. Section 21.3103(g) addresses permitted coverage denials. The adopted amendment in §21.3103(g) that changes the term "an issuer" to "a health benefit plan" is necessary for consistency with the Insurance Code §1352.003. The adopted amendment in §21.3103(g) that changes the phrase "listed in subsection (a) of this section" to "required under the Insurance Code Chapter 1352" is necessary to specify that the source of the mandated coverage is the Insurance Code Chapter 1352. Adopted new §21.3103(h) is necessary to address the inapplicability of §21.3103 to small employer health benefit plans in accordance with the Insurance Code §1352.003(h) and §1352.007(b).

Existing §21.3104(c) specifies the minimum training required in order for each issuer to comply with the requirements of §21.3104(c), relating to preauthorization of coverage or utilization review training. The adopted amendment to §21.3104(c)(3) adds the word "and" to the end of that paragraph. This is necessary to clarify that all of the types of training or instruction listed in §21.3104(c)(3)(1) - (4) comprise the total minimum requirements.

Adopted new §21.3106 is necessary to address small employer health benefit plans. The changes in Chapter 1352 of the Insurance Code enacted by HB 1919 are not applicable to small employer health benefit plans; instead, HB 1919 enacts a new §1352.0035 that contains the same requirements of Chapter 1352 that applied to small employer health benefit plans before the enactment of HB 1919. Adopted new §21.3106 is consistent with §1352.0035 of the Insurance Code. Adopted new §21.3106 addresses the following areas of regulation for small employer health benefit plans: (i) required coverage; (ii) deductibles, copayments, coinsurance, and lifetime limitations; (iii) maintenance and prevention and treatment goals; (iv) other coverage limitations; (v) permitted coverage exclusions; and (vi) permitted coverage denials.

Adopted new §21.3107 is necessary to address the mandatory annual notice of coverage to insureds and enrollees that is required in §1352.005 of the Insurance Code. Section 1352.005(a) requires a health benefit plan issuer, other than a small employer health benefit plan, to annually notify each insured or enrollee under the plan in writing about the coverages described by §1352.003. As required by §1352.005(b) of the Insurance Code, the adopted notice was prepared in consultation with the Texas Traumatic Brain Injury Advisory Council. Section 1352.005(c) of the Insurance Code specifies the required types of information that must be included in the notice. Adopted new §21.3107(a) is necessary to specify the content of the notice in accordance with §1352.005(c). Adopted §21.3107(b) is necessary to provide a process for distribution of the notice of coverage for acquired brain injury. Adopted §21.3107(c) requires the notice to be printed in at least 12-point type and to comply with the timelines specified in adopted §21.3107(c)(1)(A) and (B). Under the adopted timelines, the notice must be provided (i) within the policy term and no later than March 31, 2009, to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date of the new rules; or (ii) within the policy term and no later than the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of the new rules. Adopted new §21.3107(c)(2) requires a health benefit plan issuer to deliver the notices to insureds or enrollees through the U.S. Postal Service except as provided in §21.3107(c)(6). Adopted new §21.3107(c)(3) provides that the notice may be delivered with other health benefit plan documents that are delivered through the U.S. Postal Service as long as the time frames in §21.3107(c)(1) are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card. Adopted new §21.3107(c)(4) provides that if the notice is provided to the primary insured's or enrollee's last known address, the requirements of §21.3107 are satisfied with respect to all enrollees or insureds residing at that address. Adopted new §21.3107(c)(5) requires separate notices to be provided to the spouse or the dependent at the spouse's and/or dependent's last known address if the last known address of a covered spouse and/or dependent is different than the primary insured's or enrollee's last known address. Adopted new §21.3107(c)(6) allows the notice to be provided to the group master contract holder for distribution to insureds or enrollees of group health benefit plans if the health benefit plan issuer has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in §21.3107(c)(1). Adopted §21.3107(c)(6) further provides that in the event the notice is distributed to the group master contract holder, the health benefit plan issuer will be held responsible for ensuring that the notice is provided to the insureds or enrollees. Adopted new §21.3107(d) provides that the provisions in §21.3107 do not apply to a small employer health benefit plan issuer in accordance with §1352.003(a) of the Insurance Code.

Adopted amendments to §§21.3101(a)(3); 21.3102(6) and (7); 21.3103(b)(1); 21.3104(a), (c), and (c)(4); and 21.3105 update statutory citations to conform to the non-substantive revised Insurance Code.

HOW THE SECTIONS WILL FUNCTION.

§21.3101. General Provisions. Section 21.3101 addresses general subchapter provisions, including purpose in subsection (a), severability in subsection (b), and applicability in subsection (c). The adopted amendment to §21.3101(a)(3) updates the obsolete citation to Article 21.53Q, which is now Chapter 1352 of the Insurance Code, as a result of the legislative enactment of the non-substantive Insurance Code revision. The adopted amendment to §21.3101(a) which removes subsection (a)(4) deletes an obsolete statement of purpose. There are no further substantive changes to existing subsection (a) in this adoption. There are no changes to the existing severability provisions in §21.3101(b). Under the adopted amendments to §21.3101(c)(1), the applicability date of these adopted rules is March 31, 2009, unless specified otherwise in the rules. Adopted §21.3101(c)(1)(A) provides that, except as otherwise specified in the subchapter, the rules apply to all health benefit plans delivered, issued for delivery, or renewed on or after March 31, 2009. Adopted §21.3101(c)(1)(B) provides that, except as otherwise specified in the subchapter, health benefit plans delivered, issued for delivery, or renewed prior to March 31, 2009, are subject to the statutes and provisions of this subchapter in effect at the time the health benefit plans were delivered, issued for delivery, or renewed. The adopted amendments to §21.3101(c)(2) change the punctuation for purposes of clarification of the six separate elements. Health benefit plan issuers are not required to provide coverage for services that are not: (i) medically necessary; (ii) clinically proven; (iii) goal-oriented; (iv) efficacious; (v) based on an individualized treatment plan; or (vi) provided by, or ordered and provided under the direction of a licensed healthcare practitioner.

§21.3102. Definitions. The adopted amendments to §21.3102 add definitions for the terms "outpatient day treatment services" and "post-acute care treatment services" in paragraphs (18) and (19) and redesignate the remaining definitions accordingly.

§21.3103. Coverage for Services. Section 21.3103(a) addresses required coverage for an acquired brain injury in accordance with Chapter 1352 of the Insurance Code. The adopted amendment to §21.3103(a) adds "outpatient day treatment services or other post-acute care treatment services" to the types of required coverage.

Section 21.3103(b) addresses medically necessary and appropriate treatments and services for an acquired brain injury in accordance with Chapter 1352 of the Insurance Code. The reorganization of §21.3103 and the expansion of the subchapter to implement HB 1919 results in the use of the terms "necessary" and "medically necessary" in other rules within the subchapter in addition to §21.3103(a). Therefore, the adopted amendment to §21.3103(b)(1) changes the reference to "subsection (a) of this section," which is in the existing rules prior to this adoption, to "this subchapter." Under the adopted amendment to §21.3103(b) that adds new paragraph (2), health benefit plans are prohibited from denying benefits for the coverage required under Chapter 1352 of the Insurance Code based solely on the fact that the treatment or services are provided at a facility other than a hospital. Adopted §21.3103(b)(2) also mandates that medically necessary treatment and services for an acquired brain injury must be provided under the coverage required by Chapter 1352 at a facility at which appropriate services may be provided. Additionally, in accordance with the Insurance Code §1352.007(a)(1) and (2), examples of such facilities are specified in subparagraphs (A) and (B) of the new §21.3103(b)(2).

Section 21.3103(c) addresses maintenance, prevention, and reevaluation of care. New §21.3103(c)(2), consistent with the Insurance Code §1352.003(e), requires a health benefit plan to include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who (i) has incurred an acquired brain injury, (ii) been unresponsive to treatment, and (iii) becomes responsive to treatment at a later date. Five factors that are to be used by health benefit plans in determining whether expenses related to periodic reevaluation of care are reasonable and must be covered are specified in adopted §21.3103(c)(2). These five factors are consistent with the Insurance Code §1352.003(f).

Adopted §21.3103(d) addresses lifetime payment limitations, deductibles, copayments, and coinsurance. Under new §21.3103(d)(1) a health benefit plan is prohibited from subjecting the coverage required by §21.3103 to payment limitations, deductibles, copayments, and coinsurance factors that are more restrictive than payment limitations, deductibles, copayments, and coinsurance factors applicable to other similar coverage provided under the health benefit plan. Under new §21.3103(d)(2), a health benefit plan that includes lifetime limitations on coverage required under the Insurance Code Chapter 1352 is prohibited from including any post acute care treatment for such coverage in any lifetime limitation on the number of days of acute care treatment covered under the plan. Under new §21.3103(d)(2) a health benefit plan is required to separately state in the plan any lifetime limitation imposed under the plan on days of post-acute care treatment for the coverage required under the Insurance Code Chapter 1352.

Section 21.3103(e) addresses other coverage limitations. These limitations are the same as the limitations specified in existing 21.3103(e) prior to this adoption. The adopted amendment to §21.3103(e) is non-substantive and reflects that the source of the mandated coverage is the Insurance Code Chapter 1352.

Section 21.3103(f) addresses permitted coverage exclusions. These exclusions are the same as the exclusions specified in existing §21.3103(f) prior to this adoption. The adopted amendments to §21.3103(f) are non-substantive and (i) clarify that the term that is defined in §21.3102 is "neurofeedback therapy" rather than the existing referenced term "neurofeedback"; and (ii) specify that the source of the mandated coverage is the Insurance Code Chapter 1352.

Section 21.3103(g) addresses permitted coverage denials. These permitted coverage denials are the same as those specified in existing §21.3103(g) prior to this adoption. The adopted amendments to §21.3103(g) are non-substantive and (i) change the term "an issuer" to "a health benefit plan" for consistency with the Insurance Code §1352.003; and (ii) change the phrase "listed in subsection (a) of this section" to "required under the Insurance Code Chapter 1352" to correctly specify the source of the mandated coverage.

New §21.3103(h) specifies the inapplicability of §21.3103 to small employer health benefit plans in accordance with the Insurance Code §1352.003(h) and §1352.007(b).

§21.3104. Training. Existing §21.3104(c) specifies the minimum training required in order for each issuer to comply with the requirements of §21.3104(c) relating to preauthorization of coverage or utilization review training. The adopted amendment to §21.3104(c)(3) adds the word "and" to the end of that paragraph to clarify that all of the types of training or instruction listed in §21.3104(c)(3)(1) - (4) comprise the total minimum requirements.

§21.3105. Provision of CPT Codes. The requirements of §21.3105 are the same as those specified in existing §21.3105 prior to this adoption. The adopted amendments to this section are non-substantive and replace the obsolete citation to Article 21.53Q with the updated citation (the Insurance Code Chapter 1352).

§21.3106. Small Employer Health Benefit Plans. New §21.3106 addresses small employer health benefit plans. The changes in Chapter 1352 of the Insurance Code enacted by HB 1919 are not applicable to small employer health benefit plans; instead, HB 1919 enacts a new §1352.0035 that contains the same requirements of Chapter 1352 that applied to small employer health benefit plans before the enactment of HB 1919. Adopted new §21.3106 is consistent with §1352.0035 of the Insurance Code. Adopted new §21.3106 addresses the following areas of regulation for small employer health benefit plans: (i) required coverage; (ii) deductibles, copayments, coinsurance, and lifetime limitations; (iii) maintenance and prevention and treatment goals; (iv) other coverage limitations; (v) permitted coverage exclusions; and (vi) permitted coverage denials.

§21.3107. Mandatory Annual Notice to Insureds and Enrollees. New §21.3107 addresses the mandatory annual notice of coverage to insureds and enrollees that is required in §1352.005 of the Insurance Code. Section 1352.005(a) requires a health benefit plan issuer, other than a small employer health benefit plan, to annually notify each insured or enrollee under the plan in writing about the coverages described by §1352.003. Section 1352.005(c) of the Insurance Code specifies the required types of information that must be included in the notice. New adopted §21.3107(a) specifies the content of the notice in accordance with §1352.005(c). The process for distribution of the notice of coverage is specified in adopted §21.3107(b). Under adopted §21.3107(c) health benefit plan issuers must print the notice in at least 12-point type and comply with the timelines specified in §21.3107(c)(1)(A) and (B). Under the adopted timelines, the notice must be provided (i) within the policy term and no later than March 31, 2009, to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date of the new rules; or (ii) within the policy term and no later than the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of the new rules. Under new §21.3107(c)(2), a health benefit plan issuer must deliver the notices to insureds or enrollees through the U.S. Postal Service except as provided in §21.3107(c)(6). New §21.3107(c)(6) allows the notice to be provided to the group master contract holder for distribution to insureds or enrollees of group health benefit plans if the health benefit plan issuer has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in §21.3107(c)(1). Adopted §21.3107(c)(6) further provides that in the event the notice is distributed to the group master contract holder, the health benefit plan issuer will be held responsible for ensuring that the notice is provided to the insureds or enrollees. Under new §21.3107(c)(3) a health benefit plan issuer may deliver the notice with other health benefit plan documents that are delivered through the U.S. Postal Service as long as the time frames in §21.3107(c)(1) are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card. New §21.3107(c)(4) provides that if the notice is provided to the primary insured's or enrollee's last known address, the requirements of §21.3107 are satisfied with respect to all enrollees or insureds residing at that address. New §21.3107(c)(5) requires separate notices to be provided to the spouse or the dependent at the spouse's and/or dependent's last known address if the last known address of a covered spouse and/or dependent is different than the primary insured's or enrollee's last known address. New §21.3107(d) specifies that the provisions of §21.3107 do not apply to a small employer health benefit plan issuer. This is in accordance with §1352.003(a) of the Insurance Code.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: One commenter endorses the Department's proposed rules. Another commenter expresses appreciation for the Department's work implementing the requirements of HB 1919 regarding treatment for certain brain injuries and general support for adoption of the rules.

Agency Response: The Department appreciates the commenters' endorsement and support.

Comment: Four commenters assert that some providers are not being paid for the necessary care being provided to their patients. One of the commenters states that despite the law some companies continue to put up barriers and deny legitimate claims. According to the commenter, these barriers have either resulted in a very restricted form of their covered benefits or outright denial. The commenter states that the intent of HB 1919 is to guarantee that policyholders receive full benefits from their health plans, but that despite such efforts, enrollees and insureds are still being denied coverage based on reasoning that contradicts the law. Another commenter expresses concern that some patients are being denied coverage for a continuum of treatments offered in non-hospital settings in disregard of the current law. The commenter expresses hope that the promulgation of rules implementing HB 1919 will remove any and all confusion about what treatments are allowed and where such treatments can be offered.

Agency Response: The Department agrees that services may be provided in facilities at which appropriate services may be provided, even if such facilities are non-hospital settings. This is addressed in the Insurance Code §1352.007(a) and §21.3103(b)(2) which is adopted without change. However, the Department disagrees with the comments, insofar as they suggest that benefits should be provided without permissible contractual limitations. The Department does not have the authority to require coverage in excess of that mandated by HB 1919 and cannot prevent the application of contractual limits permitted by the Insurance Code. If a provider, insured, or enrollee believes that claims are improperly denied, the incident should be reported to the Department so that the Department may conduct an investigation and take proper action.

§21.3101(c). Applicability

Comment: One commenter suggests an effective date of at least December 1, 2008, in lieu of the proposed October 31 effective date. The commenter states that the effective date of October 31 is not a realistic date. The commenter's reasons include: (i) the proposed rule includes requirements that the commenter says are not consistent with the statute and which will therefore require filings for policy and certificate amendments; (ii) even if the rule were adopted by the Commissioner on the first possible date, it would not allow a health plan sufficient time to develop policy language amendments, file with the Department and re-

ceive Department approval in time for the amended policy language to be issued with new coverage documents issued on or after October 1, 2008; and (iii) the Department has a 60-day deemer period in which to review the forms and the proposed effective date is overly optimistic.

Agency Response: Because of the effective date of this adoption, the Department agrees that the October 1 effective date is not viable. While the Department agrees in part with the commenter's reasons for the need to have a later effective date, the Department disagrees that the proposed rule includes requirements that are not consistent with the statute. The rule in proposed §21.3103(d)(2)(A) and (B) included an interpretation of the Insurance Code §1352.003(c). The Insurance Code §1352.003(c) prohibits a health benefit plan from including in any lifetime limitation on the number of days of acute care treatment covered under the plan, any post-acute care treatment covered under the plan. It further requires that any limitation imposed under the plan on days of post-acute care treatment must be separately stated in the plan. The interpretation implemented in proposed §21.3103(d)(2)(A) and (B) may have necessitated the re-filing of policy language by some health benefit plans. The Department has determined that the applicability date of the adopted rules is March 31, 2009. Proposed §21.3101(c)(1) is revised accordingly in this adoption. The Department believes that this March 31 applicability date will provide sufficient time for insurers to take the necessary action to comply with the new requirements. As a result of this change in the applicability date to March 31, 2009, the Department has also changed the date in §21.3107(c)(1)(A) and (B) for the distribution of the Insurance Code §1352.005 mandatory notice to insureds and enrollees. As adopted, §21.3107(c)(1)(A) and (B) read: "(1) The notice shall be provided during the policy term for the plan, and no later than: (A) March 31, 2009 to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date of this subchapter; or (B) the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of this subchapter." Consistent with the intent of the proposal, the change in §21.3107(c)(1)(A) to "no later than March 31, 2009" is necessary to ensure that the notices will be distributed in a timely manner to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date. The references to "effective date" in proposed §21.3107(c)(1)(A) and (B) have been changed to "March 31, 2009 applicability date" for purposes of clarification and consistency in implementation.

Comment: A commenter requests that the Department include clarifying language in the adoption order indicating the impact of the rule on services delivered prior to the effective date of the adopted rules. According to the commenter, issues are raised concerning the effective date of the rule and the Department's interpretation of provisions in HB 1919 and Insurance Code Chapter 1352 that relate to events that have occurred between the effective date of the statute and the eventual effective date of the rule. The commenter states that services have been delivered, payments have been made, limits have been imposed, and complaints have been filed that relate to the impact of the changes made by HB 1919 and the Department's interpretation of those changes. According to the commenter, in addition to the rule text addressing applicability of the rule, a clearer statement as to the Department's intent to make use of the rule's post-HB 1919 statutory interpretation is necessary because the changes to the statute made by HB 1919 were effective well before the effective date of the rule. The commenter inquires whether the required separate statement of limitations, including limitations other than lifetime limitations specifically referenced in the statute, is applicable to health benefit plans issued or renewed prior to the effective date of the rule, and if not, would generally applicable limitations otherwise apply.

Agency Response: Beginning on January 1, 2008, all health plans subject to regulation under Chapter 1352 of the Insurance Code were required to be in compliance with the new HB 1919 requirements for coverage related to acquired brain injury. In reviewing forms filed by health benefit plans, the Department has been enforcing these statutory requirements since January 1, 2008, and will continue to do so. The Insurance Code §1352.003(c) specifies "A health benefit plan may not include, in any lifetime limitation on the number of days of acute care treatment covered under the plan, any post-acute care treatment covered under the plan. *Any limitation imposed under the plan on days of post-acute care treatment must be separately stated in the plan.*" (emphasis added) Therefore, as of January 1, 2008, plans have been statutorily required to include separate statements for any limitations imposed under the plan on days of post-acute care treatment. Under adopted §21.3101(c)(1)(B), health benefit plans delivered, issued for delivery, or renewed prior to the effective date of the rules are subject to the statutes and provisions of the new rules in effect at the time the health benefit plans were delivered, issued for delivery, or renewed, except as otherwise specified in the subchapter. Adopted §21.3107(c) implements the delivery of notice requirement in §1352.003 of the Insurance Code. This requirement is applicable to all health benefit plans regardless of the date of issuance, delivery, or renewal of the plan. Adopted §21.3107(c) specifies the notice content and requires the delivery of the notice during the policy term for the plan and (i) no later than March 31, 2009, to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008 and before the March 31, 2009 applicability date of the new rules; or (ii) no later than the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of the new rules.

§21.3102(18). Definition of "Outpatient day treatment services"

Comment: A commenter objects to the definition of "outpatient day treatment services" in proposed §21.3102(18). According to the commenter, the proposed definition includes services that are delivered in "transitional residential" settings. The commenter states that the statute does not provide authority to include residential settings in the definition of a service that is intended to be delivered on an outpatient basis.

Agency Response: The Department disagrees. It is the Department's interpretation that authority for the definition of "outpatient day treatment services" is derived from the Insurance Code §1352.007. Section 1352.007 provides that "A health benefit plan may not deny coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided. . . ." Therefore, if a facility can appropriately provide services that constitute outpatient day treatment services, the coverage required by Chapter 1352 of the Insurance Code cannot be denied merely because the facility is a residential facility.

§21.3102(18), §21.3103(a) and Figure: 28 TAC §21.3107(a). Replacement of the term "outpatient day treatment services" with newly defined terms

Comment: Four commenters recommend revising §21.3102(18) by changing the defined term from "outpatient day treatment services" into two defined terms: "outpatient treatment services" and "day treatment services." The commenters also recommend adding as a new defined term "transitional residential services." The commenters assert that the purpose of Insurance Code §1352.003(b) is to spell out the continuum of care traditionally utilized in the post acute care treatment of persons with brain injuries, from most intensive to least: transitional residential, day treatment and outpatient. According to the commenters, although the terms for outpatient and day treatment were combined into "outpatient day treatment services" in HB 1919 to describe the continuum of care, in everyday practical application by providers the services are separate. The commenters request that these services be broken out separately and written as "outpatient treatment services" and "day treatment services" because there is an appropriate distinction between the two terms. Three of these commenters recommend that "outpatient day treatment services" be defined as follows: "Structured services provided 1 - 3 hours per day, one to five days per week, to address functional deficits in physiological, behavioral, and/or cognitive functions to address the need for physical therapy, occupational therapy, speech/language therapy, neuropsychology, medicine and case management. Such services may be delivered in settings that include transitional residential, community integration, or non-residential treatment settings." These three commenters also recommend that "day treatment services" be defined as follows: "Structured services provided 4 - 6 hours per day, five days per week, to address the need for medical treatment, medical rehabilitation and disease management to address deficits in physiological, behavioral and/or cognitive functions. Such services may be delivered in settings that include transitional residential, community integration or non-residential treatment settings." Additionally, these three commenters recommend that the term "transitional residential services" be defined as "Post-acute transitional rehabilitation services providing medically or behaviorally complex medical treatment, medical rehabilitation and disease management services 24 hours a day, seven days a week."

The three commenters also suggest how to use the newly defined terms, recommending that the proposed words "including outpatient day treatment services" in §21.3103(a) be changed to "including transitional rehabilitation services, outpatient treatment services, day treatment services;" and the commenters suggest changing the words "including outpatient day treatment services" in the sixth bullet in Figure: 28 TAC §21.3107(a) to "including transitional rehabilitation services, outpatient treatment services, day treatment services."

A fifth commenter also recommends that the definition of "outpatient day treatment service" be modified to ensure that payment is made for all categories of day treatment and the full number of hours of treatment provided. The fifth commenter does not offer alternative terms, but does assert that at a minimum the Department should initiate an investigation of companies that are improperly denying these claims.

Agency Response: The Department declines to divide the term "outpatient day treatment services" into the two terms of "outpatient treatment services" and "day treatment services" and add a third term "transitional residential services." The Insurance Code §1352.003(b) as enacted by HB 1919 requires a health benefit plan to "include coverage for post-acute transition services or community reintegration services, including *outpatient day treatment services,* or other post-acute care treatment services necessary as a result of and related to an acquired brain injury." (emphasis added) Therefore, the Department does not have the statutory authority to adopt rules that require limits to be expanded to encompass each type of treatment that may exist in a continuum of care. The Insurance Code §1352.003(c) addresses two categories to which a plan may apply global limits on days of coverage: acute care and post-acute care. Pursuant to the Insurance Code §1352.003(c), a health benefit plan may apply limits on acute care and post-acute care, with the only restrictions being: (i) that a plan may not include any days of post acute care treatment covered under the plan in a lifetime limitation on the number of days of acute care treatment covered under the plan, and (ii) that a plan must separately state any limitation imposed under the plan on days of post-acute care treatment. The Insurance Code §1352.003 does not address any sub-levels of acute care treatment and post-acute care treatment or require that a certain number of days be allocated to specific types of treatment within these two categories of treatment. Section 1352.003(g) of the Insurance Code authorizes the Department to adopt rules as necessary to implement the Insurance Code Chapter 1352. It is the Department's position that this rulemaking authority does not authorize the Department to require limits to be expanded to address sub-levels of acute care treatment and post-acute care treatment or require that a certain number of days be allocated to specific types of treatment within these two categories of treatment.

In regard to the request made by the fifth commenter that the Department initiate an investigation of companies that are improperly denying claims, the Department investigates every complaint that is filed with the Department. This includes any complaint that relates to the improper denial of coverage required by Insurance Code Chapter 1352 and these rules.

§21.3102(19). Definition of "post-acute care treatment services"

Comment: A commenter asserts that in §21.3102(19), the definition of "post-acute care treatment services" should make clear that inpatient residential treatment does not qualify. According to the commenter, inpatient residential services are generally considered to be long-term care and thus subject to coverage terms, if any, of long-term care in the policy.

Agency Response: The Department disagrees. The Insurance Code §1352.003(b) states: "A health benefit plan must include coverage for post-acute transition services, community reintegration services, including outpatient day treatment services, or other post-acute care treatment services necessary as a result of and related to an acquired brain injury." Additionally, the Insurance Code §1352.007 states: "A health benefit plan may not deny coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided. . . ." Therefore, if the services are provided for post-acute transition or community reintegration, or constitute other post-acute care treatment services necessary as a result of and related to an acquired brain injury, coverage for those services cannot be denied merely because they are provided at an inpatient residential facility.

§21.3103(b). Medically Necessary and Appropriate: Facility at which appropriate services may be provided

Comment: A commenter asserts that even though the revised statutes recognize that post acute-care services may be provided in facilities other than a traditional hospital setting, some health benefit plans continue to put up barriers to treatment rather than recognize that the revised statute specifically permits post acute-care services provided in facilities other than a traditional hospital setting.

Agency Response: The Department agrees that while the Insurance Code Chapter 1352 does not use the phrase "facilities other than a traditional hospital setting," the Insurance Code §1352.007 states: "A health benefit plan may not deny coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided. . . ." The Insurance Code Chapter 1352 does not mandate that services provided as required by Chapter 1352 only be provided in hospitals. The language in Insurance Code §1352.007 is reflected in proposed §21.3103(b)(2), which is adopted without change.

Comment: Three commenters suggest deleting the term "post-acute rehabilitation hospital" from §21.3103(b)(2)(A). According to the commenters, within the health care community there is no such entity as a "post-acute rehabilitation hospital."

Agency Response: The Department disagrees and declines to make the requested change. The term "post-acute rehabilitation hospital" is used in Insurance Code §1352.007(a), which provides, in part: "Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, and may be provided at a facility at which appropriate services may be provided, including: (a) a hospital regulated under Chapter 241, Health and Safety Code, including an acute or *post acute rehabilitation hospital. . . ."* (emphasis added) Additionally, an internet search for the term "post-acute rehabilitation hospital" identified links to facilities that refer to themselves as "post-acute rehabilitation hospitals." Therefore, the term appears to be used to some degree in the health care community.

Comment: Three commenters recommend changing the words in proposed §21.3103(b)(2)(B) from "an assisted living facility regulated under the Health and Safety Code Chapter 247" to "an assisted living facility serving as a transitional rehabilitation facility as regulated under the Health and Safety Code Chapter 247." The commenters did not provide an explanation for the requested change.

Agency Response: The Department disagrees. The requested term "transitional rehabilitation facility" is not used within the Health and Safety Code Chapter 247. The Department declines to use terminology that is inconsistent with the statute. The use of such inconsistent terminology is not within the Department's rulemaking authority and could result in ambiguity and confusion.

Comment: A commenter requests that the rule clarify that coverage of services provided at an assisted living facility is limited to the actual services and not to costs associated with room and board at such a facility. The commenter points out that proposed §21.3103(b)(2) provides that coverage for the services required under HB 1919, related to acquired brain injury, may not be denied solely on the basis that the services are provided at a facility other than a hospital. The commenter further notes that the rule offers assisted living facilities as an example. According to the commenter, there exists confusion regarding payment for room and board services when rendered by an assisted living facility. As a result, if the rule examples in §21.3103(b)(2)(A) and (B) are not further clarified, there is a great potential for misunderstanding and for numerous unnecessary requests for clarification after the rule is adopted. The commenter states that the rule example could further clarify that reference to assisted living facilities does not imply that all services provided by an assisted living facility in connection with acquired brain injury are covered services mandated by the rule or statute.

Agency Response: Pursuant to the Insurance Code §1352.003(b), coverage must be provided for "post-acute care treatment services necessary as a result of and related to an acquired brain injury. . . ." Pursuant to the Insurance Code §1352.007, "A health benefit plan may not deny coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided. . . ." Therefore, if a facility, such as an assisted living facility, can appropriately provide services that constitute post-acute care treatment services, payment for those services cannot be denied merely because the facility is an assisted living facility. The Department therefore disagrees that further clarification of the example in proposed §21.3103(b)(2)(A) and (B) within the rule text is necessary. With regard to the comment about confusion regarding payment for services, the Insurance Code §1352.003(b) only requires coverage for post-acute care treatment services that are necessary as a result of and related to an acquired brain injury. Therefore, a health benefit plan under Chapter 1352 can deny coverage for services that are not medically necessary. For example, if a victim of acquired brain injury is capable of living at home and only needs a structured day program to address mild to moderate functional deficits following acquired brain injuries, 24-hour care may be found to not be medically necessary.

§21.3103(c). Maintenance, Prevention, and Reevaluation of Care

Comment: One commenter requests clarification regarding whether health plans may simply subject coverage of reasonable expenses for periodic reevaluation to the utilization review process. According to the commenter, the list of factors specified in the proposed rule that can be used to determine whether reasonable expenses for periodic reevaluation must be covered are very similar to the factors currently weighed in most health plans' utilization review process. Additionally, the commenter notes that §21.3103(c)(2) provides that health plans "must include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who has incurred an acquired brain injury, been unresponsive to treatment, and becomes responsive to treatment at a later date." According to the commenter, it is unclear what constitutes "responsive." The commenter raises the concern that any number of signs could meet the definition of being responsive even if it does not meet a definition of making progress.

Agency Response: The Department agrees that a health benefit plan may submit coverage of reasonable expenses for periodic reevaluation to the utilization review process. The Department does not agree that any clarification of what constitutes "responsive" in §21.3103(c)(2) is necessary. This is an issue for an en-

rollee or insured's provider to determine. Every victim of an acquired brain injury is impacted by the injury in a different way; therefore, it is necessary for the medical provider to determine the effect of the injury on the individual.

§21.3103(d). Lifetime Payment Limitations, Deductibles, Copayments, and Coinsurance

Comment: One commenter requests clarification in §21.3103(d) of the parameters of the separate statement of limitations applicable to post-acute care treatment services. According to the commenter, although the proposed rule requires a separate statement of limitations applicable to post-acute care treatment services, the parameters of the separate statement are unclear. The commenter asks whether the separate statement of limitations can simply indicate that the generally applicable benefits and limitations will apply to these services, or whether the Department interprets the separate statement of limitations requirement to also include a completely separate benefit for post-acute care treatment services. The commenter suggests that the latter result appears to be a significant departure from prior interpretations of this mandate and the statute itself. The commenter asks if, in a situation where a health benefit plan has an existing rehabilitation benefit and limitation, whether the separate statement may simply reference the benefit and limitation as the coverage for post-acute care treatment services.

Agency Response: Pursuant to the Insurance Code §1352.003(c), the required separate statement of limitations cannot simply indicate that the generally applicable benefits and limitations will apply to post-acute care treatment services and cannot simply reference the benefit and limitation as the coverage for post-acute care treatment services. The Insurance Code §1352.003(c) clearly provides that "any limitation imposed under the plan on days of post-acute care treatment must be separately stated in the plan." Therefore, a separate statement of limitations with a completely separate benefit for post-acute care treatment services is required to comply with the statute. Additionally, the Department does not agree that this interpretation of the statutory requirement in §1352.003(c) significantly departs from prior interpretations. The Department has included a requirement for a separate statement of limitations based on the Insurance Code §1352.003(c) in the prior draft versions of this adopted rule.

Comment: A commenter objects to proposed §21.3103(d)(2) as being inconsistent with §1352.003(c) of the Insurance Code. The commenter states that the statute, at §1352.003(c), indicates that a carrier may not apply *lifetime* limitations regarding acute care treatment to post-acute care treatment, but that there is no mention of *annual* limitations. The commenter asserts that the proposed rule adds the term *annual,* despite the fact that the statute does not contain or authorize this prohibition. The commenter asserts that the use of generally applicable *annual* limitations is allowed by the statute and should not be prohibited by the rule.

Agency Response: The Department agrees. Therefore, proposed §21.3103(d)(1) - (3) have been revised accordingly in this adoption. Adopted §21.3103(d)(1) - (3) read as follows: "(d) Lifetime Payment Limitations, Deductibles, Copayments, and Coinsurance. (1) A health benefit plan is prohibited from subjecting the coverage required under the Insurance Code Chapter 1352 to payment limitations, deductibles, copayments, and coinsurance factors that are more restrictive than payment limitations, deductibles, copayments, and coinsurance factors applicable to other similar coverage provided under the health benefit plan. (2) A health benefit plan that includes lifetime limitations on coverage required under the Insurance Code Chapter 1352 is prohibited from including any post acute care treatment for such coverage in any lifetime limitation on the number of days of acute care treatment covered under the plan. (3) A health benefit plan must separately state in the plan any lifetime limitation imposed under the plan on days of post-acute care treatment for the coverage required under the Insurance Code Chapter 1352."

Comment: A commenter suggests that §21.3103(d)(2) be clarified as follows: "If the coverage imposes a lifetime limit on acute care treatment for acquired brain injury, that lifetime limit may not include post-acute care treatment nor may any lifetime limit on post-acute care treatment be less than the lifetime limit provided for acute care treatment of acquired brain injury. If the coverage contains an overall lifetime limit on coverage for all illnesses or injuries, both acute care and post-acute care treatment for acquired brain injury may be subject to that lifetime limitation." This clarification is necessary, according to the commenter, because the language in the Insurance Code §1352.002(c) on the lifetime cap is not clear. The commenter states that §1352.002(c) could be read as permitting insurers to adopt a lower lifetime cap for acute care treatment of ABI than would be provided for treatment of any other illness or injury, with the one caveat, that whatever lifetime cap is applied for acute care of ABI could not include post-acute care for ABI. The commenter opines that the intent of the statutory language is not to carve out ABI from the normal lifetime maximum benefit of the overall coverage, which could mean a lower lifetime cap for ABI benefits than that provided for other medical conditions, but rather to prevent the use of a lifetime cap for acute care for ABI to cut off further post-acute care.

Agency Response: The Department disagrees and declines to make the change. The recommended clarification is not consistent with the statutory language. The Insurance Code §1352.003(c) provides: "A health benefit plan may not include, in any lifetime limitation on the number of days of acute care treatment covered under the plan, any post-acute care treatment covered under the plan. Any limitation imposed under the plan on days of post-acute care treatment must be separately stated in the plan." The plain language of this provision appears to require health benefit plans to provide a lifetime limit for post-acute care treatment services for an acquired brain injury that is separate from any lifetime limitation on the number of days of acute care treatment for other physical illnesses or injuries covered under the plan. The provision does not specify a total lifetime limit for post-acute care treatment services that treat an acquired brain injury. Pursuant to §21.3103(e), the coverage required by the Insurance Code Chapter 1352 may be subject to limitations and exclusions that are generally applicable to other physical illnesses or injuries under the health benefit plan. For example, these may include limitations or exclusions for services that are solely educational in nature, experimental or investigational, not medically necessary, or services for which the enrollee failed to obtain proper preauthorization under the requirements of the health benefit plan.

Comment: One commenter opines that the proposed §21.3103(d) appears to require every insurer to file a policy amendment with the Department adding a separate statement of coverage related to acquired brain injury (ABI) post-acute care services, even if that statement does nothing more than indicate that such services are limited in the same manner as any other services covered under the policy. The commenter requests that the Department provide further clarification as to the separate statement of coverage requirement in Insurance

Code §1352.003(c) and what exactly will qualify as a separate statement of coverage. The commenter asserts that although the statute includes language indicating that post-acute care limitations should be separately stated in the coverage document, that language logically relates to the prior sentence in the statute regarding the inapplicability of lifetime acute care limitations to post-acute care services. According to the commenter, if a plan does not attempt to apply any acute care limitation to post-acute care services, and instead treats post-acute care treatment services as it would services for any other illness or injury, the statutory standard would be met. This is because the post-acute care limitation is not a part of the acute care limitation and is stated separately.

Agency Response: Pursuant to the Insurance Code §1352.003(c), a separate statement of coverage is required if a health benefit plan intends to apply lifetime limits on the number of days of post-acute care treatment. While §21.3103(d) does not address this issue, §1352.003(c) provides in relevant part: "Any limitation imposed under the plan on days of post-acute care treatment must be separately stated in the plan." If a health benefit plan imposes a lifetime limitation on the number of days of post-acute care treatment, it is not sufficient for compliance with the Insurance Code §1352.003(c) for the plan to merely state that post-acute care services are limited in the same manner as any other services covered under the policy. The plan should state the number of days that comprise the lifetime limitation on post-acute care treatment.

§21.3103(e). Other Coverage Limitations.

Comment: A commenter inquires about the statutory basis of the language in proposed §21.3103(e) relating to other coverage limitations. Another commenter requests clarification regarding whether services deemed experimental or investigational may be excluded. The commenter states that, currently, most health plans exclude coverage of services deemed to be experimental or investigational.

Agency Response: Section 21.3103(e) is existing language and was not proposed for amendment in this proposal except for the subsection title and the citation update. The adoption of the substantive language in §21.3103(e) was published in 27 TexReg 7814, effective August 26, 2002. Section 21.3103(e) is based on the form filing and review provisions contained in the Insurance Code Chapter 1271, Subchapter C, relating to Commissioner approval, and Chapter 1701, Subchapter B, relating to filing requirements. One way the Department ensures that health benefit plans comply with the mandated benefit requirements of the Insurance Code Chapter 1352 is to verify that the mandated coverage is included where appropriate in forms filed with the Department. However, pursuant to Insurance Code §1271.102(a), the Commissioner must "approve the form of an evidence of coverage or group contract or an amendment to one of those forms if the form meets the requirements of this chapter [Chapter 1271]." Pursuant to Insurance Code §1701.055(a), the Commissioner may only disapprove a form filed under Chapter 1701 if it violates the Insurance Code, a rule of the Commissioner, or any other law, or contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive. A health benefit plan must provide the coverage mandated by the Insurance Code Chapter 1352, but the plan is not prohibited from including limitations and exclusions in its policy forms that do not violate the Insurance Code, Department rules, or other laws. The Insurance Code does not prohibit a health benefit plan from limiting or excluding services because they are solely educational in nature, experimental or investigational, not medically necessary, or those for which the enrollee failed to obtain proper preauthorization under the requirements of the health benefit plan. Therefore, the Department cannot prohibit a health benefit plan from including such limitations and exclusions in its forms. Section 21.3103(e) addresses these types of limitations or exclusions.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: Brain Injury Alliance of Texas, Texas Traumatic Brain Injury Advisory Council, Office of Public Insurance Counsel, Texas Association of Health Plans, one legislator, and two members of the public.

Against: None.

STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Insurance Code §§1352.003(g), 1352.0035(c), 1352.005(b), and 36.001. Section 1352.003(g) provides that the Commissioner shall adopt rules as necessary to implement Insurance Code Chapter 1352, relating to brain injury coverage. Section 1352.0035(c) provides that the Commissioner shall adopt rules as necessary to implement §1352.0035, relating to required brain injury coverage for small employer benefit plans. Section 1352.005(b) provides that the Commissioner, in consultation with the Texas Traumatic Brain Injury Advisory Council, shall prescribe by rule the specific contents and wording of the notice of coverage for acquired brain injury that is required by §1352.005(a). Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.3101. General Provisions.

(a) Purpose. The purposes of this subchapter are to:

(1) ensure that enrollees in health benefit plans receive coverage for certain services for acquired brain injury and to facilitate the recovery and progressive rehabilitation of survivors of acquired brain injuries to the extent possible to their pre-injury condition by making available therapies that are medically necessary, clinically proven, goal-oriented, efficacious, based on individualized treatment plans, and provided by, or ordered and provided under the direction of a licensed healthcare practitioner with the goal of returning the individual to, or maintaining the individual in, the most integrated living environment appropriate to the individual;

(2) ensure that an issuer provides coverage for services related to an acquired brain injury under the medical/surgical provisions of the health benefit plan; and

(3) require the issuer of a health benefit plan to provide adequate training of individuals responsible for preauthorization of coverage or utilization review under the plan in order to prevent wrongful denial of coverage required under the Insurance Code Chapter 1352 and this subchapter, and to avoid confusion of medical/surgical benefits with mental/behavioral health benefits.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the remaining provisions shall remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the provision shall remain in full effect as to other persons or circumstances.

(c) Applicability.

(1) Except as otherwise specified in this subchapter:

(A) This subchapter applies to all health benefit plans delivered, issued for delivery, or renewed on or after March 31, 2009.

(B) Health benefit plans delivered, issued for delivery, or renewed prior to March 31, 2009, are subject to the statutes and provisions of this subchapter in effect at the time the health benefit plans were delivered, issued for delivery, or renewed.

(2) Nothing in this subchapter requires the issuer of a health benefit plan to provide coverage for services that are not: medically necessary; clinically proven; goal-oriented; efficacious; based on an individualized treatment plan; or provided by, or ordered and provided under the direction of a licensed healthcare practitioner.

§21.3103. Coverage for Services.

(a) Required Coverage. Pursuant to the Insurance Code Chapter 1352, a health benefit plan must include coverage for services specified in §1352.003, including cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological, and psychophysiological testing and treatment, neurofeedback therapy, remediation, post-acute transition services and community reintegration services, including outpatient day treatment services, or other post-acute care treatment services, if such services are necessary as a result of and related to an acquired brain injury.

(b) Medically Necessary and Appropriate.

(1) For purposes of the Insurance Code §1352.003 and this subchapter, the word "necessary" means "medically necessary."

(2) Pursuant to the Insurance Code §1352.007(a), a health benefit plan may not deny benefits for the coverage required under the Insurance Code Chapter 1352, relating to brain injury, based solely on the fact that the treatment or services are provided at a facility other than a hospital. Medically necessary treatment and services for an acquired brain injury must be provided under the coverage required by Chapter 1352 at a facility at which appropriate services may be provided, which may include:

(A) a hospital regulated under the Health and Safety Code Chapter 241, including an acute or post-acute rehabilitation hospital; and

(B) an assisted living facility regulated under the Health and Safety Code Chapter 247.

(c) Maintenance, Prevention, and Reevaluation of Care.

(1) Treatment goals for services required by the Insurance Code Chapter 1352 may include the maintenance of functioning or the prevention of or slowing of further deterioration.

(2) Pursuant to the Insurance Code §1352.003(e), a health benefit plan must include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who has incurred an acquired brain injury, been unresponsive to treatment, and becomes responsive to treatment at a later date. In accordance with the Insurance Code §1352.003(f), factors for determining whether reasonable expenses related to periodic reevaluation of care must be covered may include:

(A) cost;

(B) the time that has expired since the previous evaluation;

(C) any difference in the expertise of the physician or practitioner performing the evaluation;

(D) changes in technology; and

(E) advances in medicine.

(d) Lifetime Payment Limitations, Deductibles, Copayments, and Coinsurance.

(1) A health benefit plan is prohibited from subjecting the coverage required under the Insurance Code Chapter 1352 to payment limitations, deductibles, copayments, and coinsurance factors that are more restrictive than payment limitations, deductibles, copayments, and coinsurance factors applicable to other similar coverage provided under the health benefit plan.

(2) A health benefit plan that includes lifetime limitations on coverage required under the Insurance Code Chapter 1352 is prohibited from including any post acute care treatment for such coverage in any lifetime limitation on the number of days of acute care treatment covered under the plan.

(3) A health benefit plan must separately state in the plan any lifetime limitation imposed under the plan on days of post-acute care treatment for the coverage required under the Insurance Code Chapter 1352.

(e) Other Coverage Limitations. The coverage for services required under the Insurance Code Chapter 1352 may be subject to limitations and exclusions that are generally applicable to other physical illnesses or injuries under the health benefit plan. These types of exclusions or limitations include, but are not limited to, limitations or exclusions for services that may be limited or excluded because they are solely educational in nature, experimental or investigational, not medically necessary, or services for which the enrollee failed to obtain proper preauthorization under the requirements of the health benefit plan.

(f) Permitted Coverage Exclusions. The types of limitations or exclusions permitted under the Insurance Code §1352.003(d) do not include limitations or exclusions under a health benefit plan which, in and of themselves, meet the definition of a therapy or service required under the Insurance Code Chapter 1352. For example, if a health benefit plan contains an exclusion for biofeedback therapy, the issuer may deny coverage for biofeedback therapy for any diagnosis except an acquired brain injury diagnosis because biofeedback falls within the definition of "neurofeedback therapy" as defined in §21.3102 of this subchapter (relating to Definitions), and for which coverage is required under the Insurance Code Chapter 1352. However, if the same health benefit plan also contains an exclusion for services that are not authorized prior to service, the issuer may, as allowed by subsection (e) of this subsection, deny coverage based upon the prior authorization exclusion.

(g) Permitted Coverage Denials. A health benefit plan may deny coverage and/or apply a limitation or exclusion in a health benefit plan for a service required under the Insurance Code Chapter 1352 if the service is prescribed for a condition that, although a result of, or related to, an acquired brain injury, was sustained in an activity or occurrence for which other similar coverage under the health benefit plan is limited or excluded (e.g., acts of war, participation in a riot, etc.).

(h) Inapplicability of Section to Small Employer Health Benefit Plan. In accordance with the Insurance Code §1352.003(h) and §1352.007(b), this section does not apply to a small employer health benefit plan.

§21.3107. Mandatory Annual Notice to Insureds and Enrollees.

(a) Pursuant to the Insurance Code §1352.005, health benefit plan issuers shall provide to insureds and enrollees the notification

specified in this subsection. A representation of this notification is as follows:
Figure: 28 TAC §21.3107(a)

(b) The notice required by the Insurance Code §1352.005 and subsection (a) of this section is required by the Insurance Code §1352.005 to be issued annually to each insured or enrollee under the plan. In accordance with SECTION 9 of HB 1919, 80th Legislature, the notice shall be issued to each insured or enrollee of a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2008.

(c) The notice must be printed in at least 12-point type and must comply with the following requirements;

(1) The notice shall be provided during the policy term for the plan, and no later than:

(A) March 31, 2009, to insureds or enrollees whose plans were delivered, issued for delivery, or renewed on or after January 1, 2008, and before the March 31, 2009 applicability date of this subchapter ; or

(B) the 60th day after enrollment and/or renewal to insureds or enrollees whose plans are delivered, issued for delivery, or renewed on or after the March 31, 2009 applicability date of this subchapter.

(2) Except as specified in paragraph (6) of this subsection, a health benefit plan issuer shall deliver the notice to insureds or enrollees through the U.S. Postal Service.

(3) The notice may be delivered with other health benefit plan documents that are delivered through the U.S. Postal Service as long as the time frames set forth in paragraph (1) of this subsection are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card.

(4) If the notice is provided to the primary insured's or enrollee's last known address, the requirements of this section are satisfied with respect to all insureds or enrollees residing at that address.

(5) If the last known address of a covered spouse and/or dependent is different than the primary insured's or enrollee's last known address, separate notices are required to be provided to the spouse or the dependent at the spouse's and/or dependent's last known address.

(6) For group health benefit plans, the notice may be provided to the group master contract holder for distribution to insureds or enrollees if the health benefit plan issuer has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in paragraph (1) of this subsection; however, the health benefit plan issuer will be held responsible for ensuring that the notice is provided to the insureds or enrollees.

(d) In accordance with the Insurance Code §1352.005(a), this section does not apply to a small employer health benefit plan issuer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900408
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 23, 2009
Proposal publication date: August 22, 2008
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §421.5, concerning Definitions. This amendment is adopted without changes to the proposed text published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9205) and will not be republished.

This amendment allows the Commission to accept college courses from an institution that has been accredited by a nationally recognized accrediting agency as approved by the U.S. Secretary of Education.

No comments were received from the public regarding the proposed amendment.

This amendment is adopted under §419.028 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900412
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: February 23, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 936-3838

♦ ♦ ♦

CHAPTER 435. FIRE FIGHTER SAFETY

37 TAC §435.1

The Texas Commission on Fire Protection (the Commission) adopts an amendment to §435.1, concerning Fire Fighter Safety. This amendment is adopted without changes to the proposed text published in the November 14, 2008, issue of the *Texas Register* (33 TexReg 9205) and will not be republished.

This amendment allows the Commission to offer a method which enables the fire service to prolong the in-service life of protective clothing that must be retired at 10 years from the date of

manufacture as required by the National Fire Protection Association Standard 1851 - 2008 Edition ("Standard 1851"). The revised edition of the standard went into effect on June 24, 2007, and pursuant to §419.040 Texas Government Code, ultimately must be placed in effect for the fire service in Texas. The Commission is also proposing to remove the reference to the product identified as BREATHE-TEX®, manufactured by Aldan Engineered Coated Fabrics, used as a moisture barrier in some protective clothing. The company had identified the product as defective and the Commission mandated the BREATHE-TEX® vapor barrier not be used in Texas. Aldan Engineering Coated Fabrics ceased manufacturing BREATHE-TEX® in 1992 and subsequently went out of business.

No comments were received from the public regarding the proposed amendment.

This amendment is adopted under §419.008 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2009.

TRD-200900413
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Effective date: February 23, 2009
Proposal publication date: November 14, 2008
For further information, please call: (512) 936-3838

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 Board of Nursing

Title 22, Part 11

In accordance with Texas Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 214, Vocational Nurse Education, §§214.1 - 214.13.

These rules are continuously assessed to determine whether the reason(s) for originally adopting these chapters continues to exist. Each section of these chapters is continually re-evaluated to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (The Administrative Procedure Act).

The public has thirty (30) days to comment on the rule reviews and to submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The rule review continues the implementation of the Board's rule review plan for 2007-2011 that is available on the Secretary of State's web site and will complete the rule reviews for 2008.

TRD-200900467
James W. Johnston
General Counsel
Texas Board of Nursing
Filed: February 9, 2009

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In accordance with Texas Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 215, Professional Nursing Education, §§215.1 - 215.13.

These rules are continuously assessed to determine whether the reason(s) for originally adopting these chapters continues to exist. Each section of these chapters is continually re-evaluated to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (The Administrative Procedure Act).

The public has thirty (30) days to comment on the rule reviews and to submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The rule review continues the implementation of the Board's rule review plan for 2007-2011 that is available on the Secretary of State's web site and will complete the rule reviews for 2008.

TRD-200900468
James W. Johnston
General Counsel
Texas Board of Nursing
Filed: February 9, 2009

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In accordance with Texas Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code:

Chapter 222, Advanced Practice Nurses with Prescriptive Authority, §§222.1 - 222.12.

These rules are continuously assessed to determine whether the reason(s) for originally adopting these chapters continues to exist. Each section of these chapters is continually re-evaluated to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (The Administrative Procedure Act).

The public has thirty (30) days to comment on the rule reviews and to submit any response or suggestions. No action is required by the Board. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The rule review continues the implementation of the Board's rule review plan for 2007-2011 that is available on the Secretary of State's web site and will complete the rule reviews for 2008.

TRD-200900469

James W. Johnston
General Counsel
Texas Board of Nursing
Filed: February 9, 2009

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 30, Administration, Subchapter B, State Board of Education: Purchasing and Contracts, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 30, Subchapter B, in the December 12, 2008, issue of the *Texas Register* (33 TexReg 10193).

The SBOE finds that the reasons for adopting 19 TAC Chapter 30, Subchapter B, continue to exist and readopts the rules. The SBOE received no comments related to the rule review requirement.

The SBOE is proposing an amendment in 19 TAC Chapter 30, Subchapter B. Section 30.21, Historically Underutilized Business (HUB) Program, would be updated to reflect the transfer of HUB rules from the Texas Building and Procurement Commission to the Comptroller of Public Accounts. The proposed amendment to 19 TAC Chapter 30, Subchapter B, may be found in the Proposed Rules section of this *Texas Register* issue.

TRD-200900549
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 11, 2009

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of completion of review and readoption of 16 TAC Chapter 3, relating to Oil and Gas Division. This review, which was published in the December 26, 2008, issue of the *Texas Register* (33 TexReg 10515), and readoption were conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

The Commission received one comment from Samson Lone Star, LLC ("Samson") suggesting changes to §§3.26, 3.27, 3.37, 3.38, and 3.86 (relating to Separating Devices, Tanks, and Surface Commingling of Oil; Gas To Be Measured and Surface Commingling of Gas; Statewide Spacing Rule; Well Densities; and Horizontal Drainhole Wells). Samson recommended that §3.37 be modified to require notice to affected persons for exceptions to between-well spacing distances to tracts within a maximum of the between-well spacing or twice the lease-line spacing. Lease-line exceptions require notice only for a distance of the greater of one-half the between-well spacing or the lease-line spacing, while between-well exceptions to Rule 37 require notice for all tracts touching the lease or unit. Samson indicated that, for some very large units, these two requirements are inconsistent.

Regarding §3.38, Samson suggested that notice requirements for density exceptions be modified to require notice for tracts within a maximum of the between-well spacing or twice the lease-line spacing. Samson again pointed to very large-sized tracts where a well in the center of the unit requires notice for tracts over half a mile from the proposed location. Samson recommended that a specific distance from a proposed well be given, and that the distance be representative of the accepted drainage area for wells within the field.

Regarding §3.26 and §3.27, Samson suggested that each of these rules be amended to require notice to working and royalty interest owners and publication of notice, if required, only once when an exception to the rule is first requested. Samson stated that many surface commingling facilities add wells to the facility after Commission approval of the initial commingling. The rules currently require notice to all working and royalty interest owners of all wells commingled at the facility when a well is added. Samson stated that such notice requirements are a burden to operators and a nuisance to interest owners.

Regarding §3.86, Samson stated that operational practices have changed since the rule was first adopted and that the current practice is to set casing within the correlative interval for open-hole completions and to use more cased-hole completions. Samson stated that, with such completions, the current rule requires excessive lease-line offsets and assigns excessive lateral length. Samson recommended that §3.86 be modified to define a take point as any point along a horizontal drainhole where oil and/or gas can be produced into the wellbore from the reservoir/correlative interval; to specify lease line offset to apply to all take points along a horizontal drainhole; to allow the penetration point to be off-lease; to specify between-well spacing to apply to all take points with a horizontal drainhole; and to specify the lateral length to be the distance between the first take point and the last take point in a horizontal well. Samson also discussed the special field rules regarding stacked lateral wells, which have been developed to encourage drilling wells with multiple stacked laterals to efficiently drain the reserve, and recommended that this provision be added to §3.86.

The Commission notes that amendments, repeals, or new rules are not permitted under a rule review pursuant to Texas Government Code, §2001.039, unless proposed in conjunction with the notice of review. Therefore, the Commission is precluded from adopting any of the changes suggested by Samson, although they could be considered for possible future rulemaking. Further, the Commission disagrees with Samson's suggestions to reduce the notice requirements in §§3.26, 3.27, 3.37, and 3.38; the Commission has no information to suggest that interest owners find multiple notices "a nuisance" and finds that Samson and other companies can educate interest owners through explanations provided in the notices. Regarding Samson's suggestions for §3.86, the Commission disagrees that a rule change is necessary; the procedure for special field rules is in place and is available for operators to pursue.

TRD-200900542
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: February 10, 2009

♦ ♦ ♦

The Railroad Commission of Texas files this notice of completion of review and re-adoption of 16 TAC Chapter 11, relating to Surface Mining and Reclamation Division. This review and re-adoption has been conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist. The Commission received no comments on the proposed review, which was published in the December 26, 2008, issue of the *Texas Register* (33 TexReg 10515).

TRD-200900543

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: February 10, 2009

♦ ♦ ♦

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 TAC Chapter 12, relating to Coal Mining Regulations. This review and re-adoption has been conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist. The Commission received no comments on the proposed review, which was published in the December 26, 2008, issue of the *Texas Register* (33 TexReg 10515).

TRD-200900544
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: February 10, 2009

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §26.3(c)(2)(A)

Elementary Schools

Food or Beverage	Portion Size
Chips (baked or fried) must have no more than 7.5 grams of fat per bag.	1.5 ounces
Crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, jerky, and pretzels.	1.5 ounces
Cookies/cereal bars, bakery items (e.g., pastries, muffins.) This excludes items that count as two-bread components served/sold only at breakfast. Total fat: Not to exceed 30 percent of calories or contain no more than 3 grams per 100 calories; Saturated fat: Not to exceed 10 percent of calories or contain no more than 1 gram per 100 calories; Sugar: Contain no more 10 grams per ounce.	2 ounces cookies/cereal bars 3 ounces bakery items
Frozen desserts, ice cream, frozen yogurt, pudding, and gelatin.	4 fluid ounces (1/2 cup)
Yogurt.	8 fluid ounces (1 cup)
Whole milk, flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	8 fluid ounces (1 cup)
Reduced fat milk (2 percent or less), flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	16 fluid ounces (2 cups)
Non-carbonated, unflavored water.	No limit
Juices (100 percent fruit and/or vegetable juice) may contain no more than 30 grams total sugar per 6 fluid ounce serving.	6 fluid ounces (3/4 cup)
Frozen fruit slushes. (Must contain a minimum of 50 percent fruit juice.)	6 fluid ounces (3/4 cup)

Figure: 4 TAC §26.4(c)(2)(A)

Middle/Junior High Schools

Food or Beverage	Portion Size
Chips (baked or fried) must have no more than 7.5 grams of fat per bag.	1.5 ounces
Crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, jerky, and pretzels.	1.5 ounces
Cookies/cereal bars, bakery items (e.g., pastries, muffins.) This excludes items that count as two-bread components served/sold only at breakfast. Total fat: Not to exceed 30 percent of calories or contain no more than 3 grams per 100 calories; Saturated fat: Not to exceed 10 percent of calories or contain no more than 1 gram per 100 calories; Sugar: Contain no more 10 grams per ounce.	2 ounces cookies/cereal bars 3 ounces bakery items
Frozen desserts, ice cream, frozen yogurt, pudding, and gelatin.	4 fluid ounces (1/2 cup)
Yogurt.	8 fluid ounces (1 cup)
Whole milk, flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	8 fluid ounces (1 cup)
Reduced fat milk (2 percent or less), flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	16 fluid ounces (2 cups)
Beverages (other than milk) may contain no more than 30 grams total sugar per 8 fluid ounce serving. No limit on non-carbonated, unflavored bottled water.	12 fluid ounces (1 1/2 cups)
Frozen fruit slushes. (Must contain a minimum of 50 percent fruit juice.)	8 fluid ounces (1 cup)

Figure: 19 TAC §21.2204(7)

	Year							
	Year 1		Year 2		Year 3		Year 4	
Loan Payout Amount, by Year	$20,000	$40,000	$15,000	$30,000	$20,000	$40,000	$15,000	$30,000
Specialty/ Subspecialty	**Target number of Medicaid visits for children under the age of 21 per month. (Monthly average will be calculated over a 12-month period.)**							
Family Physician, Internal Medicine and OB/GYNs	25	50	40	80	75	150	75	150
Pediatrician	N/A	50	N/A	80	N/A	150	N/A	150
Pediatric Subspecialists	N/A	15	N/A	24	N/A	45	N/A	45
General Dentists	25	50	37	75	50	100	50	100
Pediatric Dentists	N/A	50	N/A	75	N/A	100	N/A	100

Figure: 28 TAC §21.3107(a)

NOTICE OF COVERAGE FOR ACQUIRED BRAIN INJURY

Your health benefit plan coverage for an acquired brain injury includes the following services:

- Cognitive rehabilitation therapy
- Cognitive communication therapy
- Neurocognitive therapy and rehabilitation
- Neurobehaviorial, neurophysiological, neuropsychological and psychophysiological testing and treatment
- Neurofeedback therapy and remediation
- Post-acute transition services and community reintegration services, including outpatient day treatment services or other post-acute care treatment services
- Reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who has incurred an acquired brain injury, has been unresponsive to treatment, and becomes responsive to treatment at a later date, at which time the cognitive rehabilitation services would be a covered benefit.

The fact that an acquired brain injury does not result in hospitalization or acute care treatment does not affect the right of the insured or the enrollee to receive the preceding treatments or services commensurate with their condition. Post-acute care treatment or services may be obtained in any facility where such services may legally be provided, including acute or post-acute rehabilitation hospitals and assisted living facilities regulated under the Health and Safety Code.

Figure: 31 TAC §57.157(b)

Species	Ring ID in Inches
Washboard, Megalonaias nervosa	4.00
Threeridges and roundlakes, Amblema spp.	2.75
Mapleleafs and pimplebacks, Quadrula spp.	2.75
Tampico pearlymussel, Cyrtonaias tampicoensis	2.75
Bleufer, Potamilus purpuratus	2.75
All Other Species of Freshwater Mussels	2.50

Note: Hybrids among species listed above may also be sold.

Figure: 31 TAC §57.378

Common Name	Scientific Name
Gars	Lepisosteus spp and Atractosteus spp.
Bowfin	Amia calva
Shads	Dorosoma spp.
Common carp	Cyprinus carpio
Goldfish	Carassius auratus
Grass carp	Ctenopharyngodon idella
Bighead carp	Aristichthys nobilis
Suckers (buffalo)	Ictiobus spp.
River carpsucker	Carpiodes carpio
Bullhead catfishes	Ameiurus spp.
Freshwater drum	Aplodinotus grunniens
Tilapia	Tilapia spp.
Rio Grande cichlid	Cichlasoma cyanoguttatum
Silversides	Menidia beryllina and Membras martinica
Mullet	Mugil spp.
Minnows	Campostoma spp., Cyprinella spp., Hybognathus spp. Macrhybosis spp., Notemigonus spp., Notropis spp., Opsopoedus sp., Phenacobius sp., Pimephales spp., Platygobio gracilis, Rhinichthys sp., and Semotilus spp.

Note: Hybrids among species listed above may also be sold.

Figure: 31 TAC §65.72(b)(2)(C)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white.	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag limit of 5 is the possession limit allowed for flounder for those fishing with a recreational license. The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 30 flounder, except on board a licensed commercial shrimp boat. During the month of November, no flounder may be taken from the waters of this state or possessed on board a vessel.			

Gar, alligator.*	1	No limit	No limit
*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the IH 35 bridge.			
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	84	No limit
Saugeye.	3	18	No limit
Seatrout, spotted.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, Blacktip, and Bonnethead sharks.	1	64*	No limit
Atlantic sharpnose, Blacktip, and Bonnethead sharks.	1	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, White.			
Sheepshead.	5	13*	No limit
*Special Regulation: Beginning on September 1, 2008, the size limit will be 14 inches. Beginning on September 1, 2009, the size limit will be 15 inches.			
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28

Tarpon.	1	85	No limit
Triggerfish, gray.	20	14	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	**Daily Bag**	**Minimum Length (Inches)**	**Special Regulation**
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and smallmouth.			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lake Nacogdoches (Nacogdoches).	5		It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), and Monticello (Titus).	5	14 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.		18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch Slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted.			
Lake Alan Henry (Garza).	3	18	

Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No limit	
Carp: common.			
Lady Bird Lake (Travis).	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.

Catfish: blue.			
Lakes Lewisville (Denton), Richland-Chambers (Freestone and Navarro), and Waco (McLennan).	25 (in any combination with channel catfish)	30 - 45 inch slot limit	It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	No more than one blue catfish 30 inches or greater in length may be retained each day.
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			

Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

Figure: 34 TAC Chapter 3--Preamble

FY	Gain (or Loss) to General Revenue Fund 0001	Gain (or Loss) to Property Tax Relief Fund 0304
2008	$ 0	$ 0
2009	4,800,000	800,000
2010	9,700,000	1,600,000
2011	12,800,000	2,200,000
2012	12,800,000	2,200,000
2013	12,800,000	2,200,000

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Funding Availability

The Texas State Affordable Housing Corporation hereby gives Notice of Funding Availability (NOFA) for a Hurricane Relief cycle of the Texas Foundations Fund. Funding availability for the Texas Foundations Fund - Hurricane Relief is $250,000, up to $50,000 per grant. The Texas State Affordable Housing Corporation has now posted the Notice of Funding Availability on its website: www.tsahc.org. Eligible grant applicants are nonprofit organizations and rural government entities located in cities with a population less than 50,000 or counties with a population less than 100,000, not located in a federal Metropolitan Statistical Area, as of the last census. Specifically, the following Texas counties are eligible: Cameron, Hidalgo, and Willacy (Hurricane Dolly) and Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington (Hurricane Ike). Grant awards will be made for the purpose of Rehabilitation and/or Critical Repair of owner-occupied single family homes (excluding mobile homes) located in any one or more counties affected by Hurricanes Ike and Dolly, as identified in Federal Emergency Management Agencies disaster declarations FEMA - 1791 - DR, Texas and FEMA - 1780 - DR, Texas, which are owned by individuals or families at 50 percent or below of the area median family income (the "Eligible Hurricane Relief Projects").

For this Hurricane Relief Cycle only, the review and selection of proposals has been expedited. Proposals may be submitted to the Corporation as soon as they are complete. The Corporation staff will review each proposal to ensure that all Threshold requirements have been met and, if so determined, the staff will forward the Proposal to the Advisory Council of the Texas Foundations Fund. The Advisory Council will review the proposals and make recommendations. Because of the urgent need and serious health and safety issues that resulted from Hurricanes Ike and Dolly, the Board of Directors has given the President of the Corporation the authority to make award selections.

Questions should be submitted in writing to Katherine Closmann by email at kclosmann@tsahc.org. To view the Texas Foundations Fund Guidelines, the full NOFA, and the Proposal Checklist, please go to www.tsahc.org.

TRD-200900521
David Long
President
Texas State Affordable Housing Corporation
Filed: February 9, 2009

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period December 2008, as required by Tax Code, §202.058, is $64.39 per barrel for the three-month period beginning on September 1, 2008, and ending November 30, 2008. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of December 2008, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period December 2008, as required by Tax Code, §201.059, is $5.55 per mcf for the three-month period beginning on September 1, 2008, and ending November 30, 2008. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2008, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200900446
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: February 6, 2009

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Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period January 2009, as required by Tax Code, §202.058, is $48.32 per barrel for the three-month period beginning on October 1, 2008, and ending December 31, 2008. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period January 2009, as required by Tax Code, §201.059, is $5.16 per mcf for the three-month period beginning on October 1, 2008, and ending December 31, 2008. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2009, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200900447
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: February 6, 2009

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Notice of Award

Pursuant to §2107.003(c-1), Texas Government Code and Chapter 2156, Subchapter C, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the award of the following collection services contract:

A contract is awarded to Linebarger Goggan Blair & Sampson, LLP, The Terrace II, 2700 Via Fortuna Drive, Suite 400, Austin, Texas 78746. The total contract amount is based on a contingent fee of 30% of all amounts collected by the contractor. The initial term of the contract is February 4, 2009 through August 31, 2010.

The Comptroller's Request for Proposals 190b (RFP) related to this contract award was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7338).

TRD-200900444
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 5, 2009

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Notice of Contract Amendment

Pursuant to Chapter 2254, Subchapter B, Chapter 403, and Chapter 2305, Texas Government Code, the State Energy Conservation Office (SECO) of the Comptroller of Public Accounts (Comptroller) announces this notice of amendment of a consulting contract awarded in connection with the Request for Proposals (RFP #180a) for technical assistance and consulting services to assist the Comptroller with the preparation of a written, comprehensive update to the Texas Renewable Energy Resource Assessment - Survey, Overview & Recommendations, and related services.

The contractor is Frontier Associates, LLC, 1515 S. Capital of Texas Highway, Suite 110, Austin, Texas 78746-6544. The total amount of the contract is not to exceed $249,993.00. The term of the contract is September 27, 2007 to May 31, 2009. The amendment modifies Attachment A, Statement of Services to be Performed, and Attachment B, Budget.

The notice of request for proposals (RFP #180a) was published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4793). The Notice of Award was published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7536).

TRD-200900458
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: February 6, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/16/09 - 02/22/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/16/09 - 02/22/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200900510
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 9, 2009

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Texas Education Agency

Notice of Correction Concerning the 2009-2010 Adult Education and Family Literacy Program and Temporary Assistance for Needy Families Program

The Texas Education Agency (TEA) published Notice of Texas Education Agency Secure Environment (TEA SE) Access and Notice of the Grant Writer Designation Form for the 2009-2010 Adult Education and Family Literacy Program and Temporary Assistance for Needy Families Program in the January 23, 2009, issue of the *Texas Register* (34 TexReg 450); and Request for Applications Concerning the 2009-2010 Adult Education and Family Literacy Program and Temporary Assistance for Needy Families Program in the February 13, 2009, issue of the *Texas Register* (34 TexReg 1130). The TEA is no longer requesting competitive grant applications under Request for Applications (RFA) #701-09-109. In addition, the Texas Education Telecommunication Network (TETN) session (TETN Event #34865 on Wednesday, February 25, 2009) for competitive grant applicants is cancelled.

Further Information. For clarifying information about the RFA, contact Iris Adams, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

TRD-200900548
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 11, 2009

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Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Act (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2009 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2009 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than October 31, 2009; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

The State of Texas (Texas Education Agency) has chosen to submit a 2009 State Application providing assurances the state will operate con-

sistent with all the requirements of Public Law 108-446 and applicable regulations.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at http://www.tea.state.tx.us/special.ed/eligdoc/index.html. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of IDEA Coordination at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of IDEA Coordination, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2009 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 11, 2009.

Further Information. For more information, contact the TEA Division of IDEA Coordination by mail at 1701 North Congress Avenue, Room 6-127, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at sped@tea.state.tx.us.

TRD-200900547
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 11, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2009.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 23, 2009.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Advance Hydrocarbon Corporation; DOCKET NUMBER: 2008-1627-MSW-E; IDENTIFIER: RN105384556; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 Texas Administrative Code (TAC) §327.5(c), by failing to submit a written report describing the details of a spill and supporting the adequacy of the response action; PENALTY: $1,050; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: ARISTOS, INC. dba Smart Stop; DOCKET NUMBER: 2008-1655-PST-E; IDENTIFIER: RN102256088; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Albert Abusalah dba Braeswood Texaco; DOCKET NUMBER: 2008-1077-PST-E; IDENTIFIER: RN101725513; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor an underground storage tank (UST) for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurements for regulated inputs, withdrawals, and the amount remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Cardinal Meadows Improvement District; DOCKET NUMBER: 2008-1485-MLM-E; IDENTIFIER: RN101441418; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; 30 TAC §290.46(1), by failing to flush dead-end mains at monthly intervals; 30 TAC §228.20(a) and §228.30(5), by failing to submit a drought contingency plan; and 30 TAC §291.93(3) and the Code, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that clearly explains how a retail public utility that has exceeded 85% of its capacity will provide the expected service demands; PENALTY: $1,804; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: C.H. INVESTMENTS, INC.; DOCKET NUMBER: 2008-1494-EAQ-E; IDENTIFIER: RN105601868; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: non-residential construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a contributing zone plan; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2008-1584-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: ethylene production plant; RULE VIOLATED: 30 TAC §§106.6(b) and (c), 116.115(c), and 116.116(a)(1), New Source Review (NSR) Permit Number 18568, Special Condition (SC) Number 9, and THSC, §382.085(b), by failing to operate as represented; and 30 TAC §116.115(b)(2)(F) and (c), NSR Permit Number 21101, SC Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $27,350; Supplemental Environmental Project (SEP) offset amount of $13,675 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Scott Halbert dba Citgo Convenience Store; DOCKET NUMBER: 2008-1649-PST-E; IDENTIFIER: RN104366760; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; and 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with the control requirements for emission limitation anywhere in the liquid transfer or vapor balance system; PENALTY: $3,379; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(8) COMPANY: Cresent NJK Corporation dba Grapevine Cleaners; DOCKET NUMBER: 2008-1432-DCL-E; IDENTIFIER: RN104091574; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e), by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $1,270; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Alberto Perez dba Dos Amigos Guns; DOCKET NUMBER: 2008-0541-PST-E; IDENTIFIER: RN101773240; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: gun shop with retail sales of gasoline products; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed update, three USTs; and 30 TAC §334.7(d)(3), by failing to upgrade the UST registration form; PENALTY: $23,730; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Ed Bell Construction Company; DOCKET NUMBER: 2008-1691-WQ-E; IDENTIFIER: RN105631600; LOCATION: Denton County; TYPE OF FACILITY: road construction site; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; PENALTY: $5,000; SEP offset amount of $2,500 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Forest Glen, Inc.; DOCKET NUMBER: 2008-1754-MWD-E; IDENTIFIER: RN103015376; LOCATION: Walker County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11844001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia-nitrogen; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number 11844001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports (DMRs); PENALTY: $4,485; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Gilbert & Geraldine Malooly Children's Trust dba Shell Super 10; DOCKET NUMBER: 2008-1611-AIR-E; IDENTIFIER: RN100814524; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: gasoline dispensing site; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure requirement of seven pounds per square inch absolute; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Huntsman Polymers Corporation N/K/A Huntsman Advanced Materials LLC; DOCKET NUMBER: 2008-1424-AIR-E; IDENTIFIER: RN101867554; LOCATION: Odessa, Ector County; TYPE OF FACILITY: polyethylene and polypropylene production plant; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit (FOP) Number O-01230, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit the Title V permit compliance certification; 30 TAC §116.115(c), NSR Permit Number 16963, SC Number 9, and THSC, §382.085(b), by failing to monitor 4,331 flanges/connectors, 4,458 valves, 22 pressure relief valves, and 5 pump seals in volatile organic compound (VOC) service; and 30 TAC §101.20, 40 Code of Federal Regulations §60.562-2, and THSC, §382.085(b), by failing to monitor 230 valves, 621 flanges/connectors, and 4 pressure relief valves in VOC service; PENALTY: $39,774; SEP offset amount of $15,910 applied to Keep Odessa Beautiful, Inc.; ENFORCEMENT COORDINATOR: Trina Greico, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(14) COMPANY: Insulfoam LLC; DOCKET NUMBER: 2008-1770-AIR-E; IDENTIFIER: RN104694948; LOCATION: Marlin, Falls County; TYPE OF FACILITY: polystyrene block molding foam fabrication; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-02901, GTC, and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $1,925; ENFORCEMENT COORDINATOR: Trina Greico, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: KNJ ENTERPRISES, INC. dba Speedy Express 3; DOCKET NUMBER: 2008-1640-PST-E; IDENTIFIER: RN101840072; LOCATION: Highlands, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and

make them available for inspection; 30 TAC §334.48(b), by failing to ensure that the UST system is operated, maintained, and managed in accordance with accepted industry practices; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank; PENALTY: $20,195; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Tom Van Nguyen dba Lisa Food Mart; DOCKET NUMBER: 2008-1865-PST-E; IDENTIFIER: RN104967203; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $4,446; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Mike Hweidi dba Hick's Country Store; DOCKET NUMBER: 2008-1607-PST-E; IDENTIFIER: RN101433712; LOCATION: Southlake, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for the inspection; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated inputs, withdrawals, and the amount still remaining in the tank; 30 TAC §334.50(d)(9)(A)(iii) and the Code, §26.3475(c)(1), by failing to obtain a statistical inventory reconciliation analysis report from the designated provider; 30 TAC §334.48(c), by failing to conduct effective annual or automatic inventory control procedures for all USTs; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II VRS; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each current employee receives in-house Stage II vapor recovery training; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; 30 TAC §115.245(6) and THSC, §382.085(b), by failing to submit the Stage II test results to the agency; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $16,858; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: North Texas District Council Assemblies of God; DOCKET NUMBER: 2008-1704-MWD-E; IDENTIFIER: RN101513554; LOCATION: Ellis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013847001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for biochemical oxygen demand (BOD), total suspended solids, and total chlorine; PENALTY: $7,050; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Gary Lane Nutt dba Nutt Feedyard; DOCKET NUMBER: 2008-1626-AGR-E; IDENTIFIER: RN101609485; LOCATION: Castro County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULE VIOLATED: 30 TAC §321.46(e)(1) and TPDES CAFO General Permit Number TXG920358, Part IV.B.1., by failing to submit an annual report with all information required to the TCEQ; and 30 TAC §321.36(d)(1) and TPDES CAFO General Permit Number TXG920358, Part III.A.11(a), by failing to develop and implement a nutrient management plan; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: Red River Redevelopment Authority; DOCKET NUMBER: 2008-1589-IWD-E; IDENTIFIER: RN101274231; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: wastewater collection and treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004664000, Effluent Limitations and Monitoring Requirement Number 3, Permit Condition Number 2.d., and the Code, §26.121(a), by failing to prevent an unauthorized discharge; and 30 TAC §305.125(5) and TPDES Permit Number WQ0004664000, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times; PENALTY: $12,850; SEP offset amount of $10,280 applied to RC&D - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: RG Holdings, Inc. dba Allen Shell; DOCKET NUMBER: 2008-1664-PST-E; IDENTIFIER: RN101533800; LOCATION: Allen, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1), (6), and (7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request; 30 TAC §334.49(b)(3)(B) and the Code, §26.3475(d), by failing to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and test the protected component for electrical isolation; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,875; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: City of Rochester; DOCKET NUMBER: 2008-1295-MWD-E; IDENTIFIER: RN101920114; LOCATION: Haskell County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011636001, Special Provisions Number 3, by failing to properly operate and maintain the wastewater treatment ponds; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011636001, Effluent Limitations and Monitoring Requirements B, by failing to accurately monitor flow; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011636001, Special Provisions Number 3, by failing to adequately maintain the facility to achieve optimum efficiency of treatment capability; 30 TAC §305.125(1), TPDES Permit Number WQ0011636001, Effluent Limitations and Monitoring Requirements A, and the Code, §26.121(a), by failing to maintain compliance with the permit effluent limits for BOD; and 30 TAC §305.125(1) and TPDES Permit Number WQ0011636001, Standard Provisions Number 2.c, by failing to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%; PENALTY: $7,490; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: South Texas Aggregates, Inc.; DOCKET NUMBER: 2008-1352-EAQ-E; IDENTIFIER: RN103991352; LOCATION: Uvalde County; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.5(a)(1), by failing to obtain approval of a water pollution abatement plan; and 30 TAC §213.4(a)(1) and §213.5(a)(4), by failing to obtain approval of an aboveground storage tank facility plan; PENALTY: $36,400; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Trinity Pines Conference Center, Inc.; DOCKET NUMBER: 2008-1788-MWD-E; IDENTIFIER: RN103014494; LOCATION: Trinity County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; 30 TAC §305.125(17) and TPDES Permit Number 12371001, Sludge Provisions, by failing to timely submit copies of an annual sludge report; 30 TAC §305.125(5) and TPDES Permit Number WQ0014842001, Operational Requirements Number 1, by failing to properly operate and maintain all systems of collection, treatment, and disposal; 30 TAC §305.125(1), TPDES Permit Number WQ0014842001, Effluent Limitations and Monitoring Requirements Number 6, and the Code, §26.121(a), by failing to comply with the minimum dissolved oxygen concentration permitted effluent limit of four milligrams per liter; 30 TAC §319.6 and TPDES Permit Number WQ0014842001, Monitoring and Reporting Requirements Number 1, by failing to assure the quality of all residual chlorine measurements through the use of standards or duplicate analysis; 30 TAC §319.6 and TPDES Permit Number WQ0014842001, Monitoring and Reporting Requirements Number 1, by failing to analyze effluent samples in accordance with approved methods; 30 TAC §319.7(d) and TPDES Permit Number 12371001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the DMR; and 30 TAC §319.1 and TPDES Permit Number 12371001, Effluent Limitations and Monitoring Requirements Number 1, by failing to report the daily average flow value on the DMR; PENALTY: $26,425; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: United Fuel & Energy Corporation; DOCKET NUMBER: 2008-1623-PST-E; IDENTIFIER: RN102230026; LOCATION: Hockley County; TYPE OF FACILITY: un-manned card operated retail fuel sales; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: $4,300; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 293-6580; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-200900522
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2009

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Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Corrective Action Order (AO) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. Section 7.075 requires that notice of the proposed order 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 23, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the 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 the AO should be sent to the enforcement coordinator designated for the 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 23, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AO and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AO shall be submitted to the commission in **writing**.

(1) COMPANY: Texas Petrochemicals LLC; DOCKET NUMBER: 2009-0022-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing; VIOLATIONS FOR WHICH STIPULATED PENALTIES WILL BE ASSESSED: each emissions event during which the quantity of unauthorized emissions, as defined in 30 Texas Administrative Code (TAC) §101.1, of volatile organic compounds from any source at the plant exceeds the applicable reportable quantity, as defined in 30 TAC §101.1, including an emission event that causes highly reactive volatile organic compounds emissions from any flare, vent,

pressure relief valve, cooling tower, or combination of those sources at the plant to exceed the emission limitation established in 30 TAC §115.722(c)(1); each excess opacity event, as defined in 30 TAC §101.1, from any source at the plant that is caused by uncombusted hydrocarbons; and each violation of the reporting requirements of 30 TAC §101.201 that is identified by the executive director for an emissions event at the plant; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200900523
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2009

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Enforcement Orders

An agreed order was entered regarding Ricardo Aguero dba Aguero's Trucking, Docket No. 2005-1908-MSW-E on January 29, 2009 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 430-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kamal Kassira dba East Food Mart, Docket No. 2006-0048-PST-E on January 29, 2009 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding David McBirnie dba Little Papas, Docket No. 2006-0322-PST-E on January 29, 2009 assessing $6,405 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding D.W. Subdivision Water Supply Corporation, Docket No. 2006-1060-PWS-E on January 29, 2009 assessing $12,765 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Classic Convenience Inc. dba Step In Food, Docket No. 2006-1473-PST-E on January 29, 2009 assessing $4,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack R. Wade dba J & S Grocery, Docket No. 2006-1860-PST-E on January 29, 2009 assessing $3,745 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John R. Limas, Docket No. 2006-1905-LII-E on January 29, 2009 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Millennium Gasoline Corporation dba Teasley Shell, Docket No. 2006-2220-PST-E on January 29, 2009 assessing $8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-0214-AIR-E on January 29, 2009 assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, 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. 2007-0286-AIR-E on January 29, 2009 assessing $168,416 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Opti-Blast, Inc., Docket No. 2007-0507-IHW-E on January 29, 2009 assessing $63,500 in administrative penalties with $12,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 San Antonio Disposal Interests, L.P. dba Target Brush and Grinding, LLC, Docket No. 2007-0679-MSW-E on January 29, 2009 assessing $3060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP and Shell Oil Company, Docket No. 2007-0837-AIR-E on January 29, 2009 assessing $166,530 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, 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. 2007-1080-AIR-E on January 29, 2009 assessing $16,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Itasca Landfill TX, LP, Docket No. 2007-1695-IHW-E on January 29, 2009 assessing $8,625 in administrative penalties with $1,725 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2007-1981-AIR-E on January 29, 2009 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alcoa World Alumina LLC, Docket No. 2008-0409-AIR-E on January 29, 2009 assessing $96,360 in administrative penalties with $19,272 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2008-0431-AIR-E on January 29, 2009 assessing $40,150 in administrative penalties with $8,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Orange, Docket No. 2008-0533-MWD-E on January 29, 2009 assessing $58,555 in administrative penalties with $11,711 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy, Docket No. 2008-0683-MLM-E on January 29, 2009 assessing $3,080 in administrative penalties with $616 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding San Pedro Canyon Water Company, Docket No. 2008-0729-MLM-E on January 29, 2009 assessing $1,877 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Long Beach Shavings Co., Inc. dba TexPak, Docket No. 2008-0782-AIR-E on January 29, 2009 assessing $4,750 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIN Inc., Docket No. 2008-0788-IWD-E on January 29, 2009 assessing $28,860 in administrative penalties with $5,772 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Building Materials Corporation of America, Docket No. 2008-0805-AIR-E on January 29, 2009 assessing $50,925 in administrative penalties with $10,185 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-0821-AIR-E on January 29, 2009 assessing $17,250 in administrative penalties with $3,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lonzo Gale dba Lass Utility Service Company, Docket No. 2008-0853-MLM-E on January 29, 2009 assessing $8,356 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 82, Docket No. 2008-0869-MWD-E on January 29, 2009 assessing $3,525 in administrative penalties with $705 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kuraray America, Inc., Docket No. 2008-0883-AIR-E on January 29, 2009 assessing $20,200 in administrative penalties with $4,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U-2 STORES, INC. dba New Era Food Mart, Docket No. 2008-0965-PST-E on January 29, 2009 assessing $5,200 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cottonwood Creek MHP, L.P., Docket No. 2008-0967-PWS-E on January 29, 2009 assessing $993 in administrative penalties with $198 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Texas Water Supply Corporation, Docket No. 2008-0978-WQ-E on January 29, 2009 assessing $4,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Campbell Soup Supply Company L.L.C., Docket No. 2008-0981-IWD-E on January 29, 2009 assessing $3,480 in administrative penalties with $696 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2008-0983-MWD-E on January 29, 2009 assessing $3,340 in administrative penalties with $668 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2008-0988-PWS-E on January 29, 2009 assessing $1,645 in administrative penalties with $329 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matrix Metals LLC, Docket No. 2008-0995-AIR-E on January 29, 2009 assessing $9,675 in administrative penalties with $1,935 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holly Energy Partners - Operating, L.P., Docket No. 2008-1011-AIR-E on January 29, 2009 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jon Klemme dba Klemme Dairy, Docket No. 2008-1020-AGR-E on January 29, 2009 assessing $4,430 in administrative penalties with $886 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy Vinyls, LP, Docket No. 2008-1053-AIR-E on January 29, 2009 assessing $4,450 in administrative penalties with $890 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2008-1074-AIR-E on January 29, 2009 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Methodist Hospital, Plainview, Texas dba Covenant Hospital Plainview, Docket No. 2008-1078-PST-E on January 29, 2009 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOHSIN INC. dba Green Acre Mart, Docket No. 2008-1087-PST-E on January 29, 2009 assessing $8,550 in administrative penalties with $1,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New West Construction, LLC, Docket No. 2008-1106-WQ-E on January 29, 2009 assessing $5,113 in administrative penalties with $1,022 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Pipeline Company LP, Docket No. 2008-1111-AIR-E on January 29, 2009 assessing $2,400 in administrative penalties with $480 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding State Service Co., Inc., Docket No. 2008-1112-MLM-E on January 29, 2009 assessing $5,775 in administrative penalties with $1,155 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syed N. Hyder, Docket No. 2008-1141-MWD-E on January 29, 2009 assessing $43,993 in administrative penalties with $8,798 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caprock Dairy, L.L.C., Docket No. 2008-1171-AGR-E on January 29, 2009 assessing $4,080 in administrative penalties with $816 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1977 Kindred II, L.P., Docket No. 2008-1183-MWD-E on January 29, 2009 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasha Sajjad dba King Food Citgo, Docket No. 2008-1184-PST-E on January 29, 2009 assessing $2,350 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Byers, Docket No. 2008-1199-MWD-E on January 29, 2009 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Santos Barcenas dba Buckets Convenience Store, Docket No. 2008-1207-PST-E on January 29, 2009 assessing $11,130 in administrative penalties with $2,226 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greenwood Ventures Inc., Docket No. 2008-1213-PWS-E on January 29, 2009 assessing $541 in administrative penalties with $108 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Victoria, Docket No. 2008-1221-MLM-E on January 29, 2009 assessing $3,850 in administrative penalties with $770 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Flint Hills Resources, LP, Docket No. 2008-1222-AIR-E on January 29, 2009 assessing $5,075 in administrative penalties with $1,015 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jafar Hakimzadeh dba Memorial Park Shell, Docket No. 2008-1235-PST-E on January 29, 2009 assessing $8,044 in administrative penalties with $1,608 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IH-10/Loop 1604 Partners, Ltd., Docket No. 2008-1241-EAQ-E on January 29, 2009 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAIRWAY ENTERPRISES, INC. dba 1st Choice Food Store 1, Docket No. 2008-1245-PST-E on January 29, 2009 assessing $4,100 in administrative penalties with $820 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael 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 Douglas Wayne Harris dba MO-ROCK, Docket No. 2008-1271-AIR-E on January 29, 2009 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LDH Energy Mont Belvieu L.P., Docket No. 2008-1272-AIR-E on January 29, 2009 assessing $850 in administrative penalties with $170 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, 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 City of Mount Vernon, Docket No. 2008-1280-PWS-E on January 29, 2009 assessing $300 in administrative penalties with $60 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PostOak Retailer's Inc. dba Welcome Food Mart, Docket No. 2008-1302-PST-E on January 29, 2009 assessing $7,740 in administrative penalties with $1,548 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2008-1341-AIR-E on January 29, 2009 assessing $9,800 in administrative penalties with $1,960 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnson County Pipe, Inc., Docket No. 2008-1342-AIR-E on January 29, 2009 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AWAD ENTERPRISES INC dba A Madco Food Store, Docket No. 2008-1381-PST-E on January 29, 2009 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Industries, Inc., Docket No. 2008-1384-AIR-E on January 29, 2009 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boyd R. Freitag dba Friday's General Store, Docket No. 2008-1391-PWS-E on January 29, 2009 assessing $200 in administrative penalties with $40 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlas Roofing Corporation, Docket No. 2008-1411-AIR-E on January 29, 2009 assessing $4,850 in administrative penalties with $970 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of Austin, Docket No. 2008-1789-PST-E on January 29, 2009 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Red River Biodiesel, Ltd., Docket No. 2008-1791-WQ-E on January 29, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Image Homes, Ltd., Docket No. 2008-1798-WQ-E on January 29, 2009 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200900559

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2009

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Notice of District Petition

Notice issued February 6, 2009

TCEQ Internal Control No. 12302008-D04; Woodcreek Pin Oak, Ltd. (Petitioner) filed a petition for the creation of Fort Bend Municipal Utility District No. 199 with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code (TAC) Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk of Fort Bend County, pursuant to 30 TAC §293.11(d). The petition states the following: (1) the Petitioner holds title to land within the proposed District and is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 86.78 acres located in Fort Bend County, Texas; and (4) the proposed District is within the corporate limits of the City of Katy, Texas. By affidavit, the lien holder, International Bank of Commerce, has consented to the creation of the proposed District. By Ordinance No. 2403, effective October 13, 2008, the City of Katy, Texas, gave its consent to the creation of the proposed District, pursuant to the Texas Water Code §54.016. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $18,654,900.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional informa-

tion, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200900558
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2009

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

Copies 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 23, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Addison Enterprises, Inc. dba Atwell 66; DOCKET NUMBER: 2007-2010-PST-E; TCEQ ID NUMBER: RN102411766; LOCATION: 5757 Bellaire Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.242(1)(C), (3), and (3)(A), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; PENALTY: $1,070; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Effluent Recycling, Inc.; DOCKET NUMBER: 2007-0619-MLM-E; TCEQ ID NUMBER: RN101569879 and RN102755089; LOCATION: 1010 Benjamin Street, Fort Worth, Tarrant County (Facility 1) and 1117 South Commerce, Ranger, Eastland County (Facility 2); TYPE OF FACILITY: industrial hazardous waste generation, storage, and disposal facility (Facility 1) and used oil handling facility (Facility 2); RULES VIOLATED: 30 TAC §335.2(a) and §335.43(a) and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to obtain a permit to store hazardous waste in on-site storage tank number three, the in ground tank, and frac tanks numbers 1 and 2 (Facility 1); 30 TAC §335.112(a)(8) and 40 CFR §265.173 and §265.176, by failing to close hazardous waste containers, except when necessary to add or remove waste and by failing to maintain containers holding ignitable waste at least 50 feet from the facility's property line (Facility 1); 30 TAC §335.112(a)(9) and 40 CFR §265.192, by failing to provide written assessment that was reviewed and certified by an independent, qualified, registered professional engineer attesting that the tank and tank system had sufficient structural integrity and was acceptable for the storing and treating of hazardous waste (Facility 1); 30 TAC §335.112(a)(9) and 40 CFR §265.193, by failing to install and maintain secondary containment which is designed to prevent any migration of wastes or accumulated liquids out of the system into the soil, groundwater, or surface water at any time during the use of the tank system (Facility 1); 30 TAC §335.112(a)(9) and 40 CFR §265.195(g), by failing to provide documentation for inspections conducted on the tank system (Facility 1); 30 TAC §335.4(1), by failing to prevent the disposal of industrial solid waste in such a manner to cause the discharge or imminent threat of discharge into or adjacent to the waters in the state without specific authorization (Facility 1); 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct a complete Hazardous Waste Determination for the ground storage tank bottoms, the contents of the four storage tanks, the contaminated soil in the roll-off box, the contents of the in ground tank, and the contents of the two frac tanks (Facility 1); 30 TAC §327.3(b) and §327.5(c), by failing to make notifications of reportable discharges or spills into the environment within 24 hours (Facility 1); 30 TAC §335.5 and §335.6(a), by failing to deed record and by failing to comply with written or electronic notification requirements for the disposal of industrial solid waste at the facility (Facility 2); 30 TAC §324.4, 40 CFR §279.12(a), and TWC, §26.121, by failing to manage used oil in such a manner so as not to endanger the welfare of the environment (Facility 2); 30 TAC §324.6 and 40 CFR §279.22, by failing to maintain six 12,000 gallon used oil storage tanks in good condition with no visible leads and labeled or marked clearly with the words "Used Oil" (Facility 2); 30 TAC §324.1 and §324.12(3) and 40 CFR §279.44(a) and §279.53(a), by failing to provide documentation to meet the rebuttable presumption for used oil as a transporter and processor/re-refiner under the rebuttable presumption of 40 CFR §279.10(b)(ii) and by failing to have a facility analysis plan (Facility 2); 30 TAC §324.12 and 40 CFR §279.52, by failing to maintain and operate the facility to minimize the possibility of a fire or explosion (Facility 2); 30 TAC §324.22(d)(3), by failing to provide secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours (Facility 1); 30 TAC §324.11(2) and §324.4(2)(C)(i), by failing to obtain a registration for transporting and storing used oil (Facility 1); 30 TAC §37.2011 and §324.22(b), (c), and (e), by failing to establish and maintain financial assurance for soil remediation (Facility 1); 30 TAC §324.4(1), by failing to prevent the discharge of used oil from tanks and containers to surface soils (Facility 1); 30 TAC §334.47(a)(2), by failing to permanently remove from service or bring into timely compliance with upgrade requirements an existing Underground Storage Tank (UST) system (Facility 1); 30 TAC §335.4(1), by failing to prevent the discharge of wastes from tanks and containers to surface soils (Facility 1); 30 TAC §335.69(a)(1)(B) and 40 CFR §265.190, by failing to limit storage of hazardous waste to 90 days or less, and by failing to prevent the accumulation and/or storage of hazardous waste in tanks without adequate secondary containment, integrity assessment, and recordkeeping (Facility 1); and 30 TAC §335.62 and 40 CFR §262.11,

by failing to conduct an appropriate hazardous waste determination on wastes generated at the site (Facility 1); PENALTY: $86,660; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800 and Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Fallbrook Enterprises, Inc. dba Fashion Cleaners; DOCKET NUMBER: 2006-1544-DCL-E; TCEQ ID NUMBER: RN104355912; LOCATION: 8925 Fallbrook Drive, Suite 1200, Houston, Harris County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay Dry Cleaner registration fees for TCEQ Financial Administration Account Number 24004034 and associated late fees for Fiscal Year 2007; PENALTY: $1,185; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Gian O'Donnell dba American Convenience; DOCKET NUMBER: 2008-0287-PST-E; TCEQ ID NUMBER: RN101809713; LOCATION: 1001 College Avenue, South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; THSC, §382.085(b) and 30 TAC §115.242(1)(C), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery (ORVR) compatible system; and TWC, §5.702 and 30 TAC §334.22(a), by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0036044U for Fiscal Years 2005 - 2007; PENALTY: $3,060; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Lauro Gonzalez dba Lauro's Welding and Sandblasting; DOCKET NUMBER: 2008-0895-AIR-E; TCEQ ID NUMBER: RN102547650; LOCATION: Highway 44 at the intersection of Highway 44 and Highway 77, Robstown, Nueces County; TYPE OF FACILITY: surface coating and abrasive cleaning operation; RULES VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to operate a plant with air emissions; PENALTY: $4,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: League City Paving Company, Inc.; DOCKET NUMBER: 2007-1630-MLM-E; TCEQ ID NUMBER: RN101784726; LOCATION: 2514 Anders Lane, Kemah, Galveston County; TYPE OF FACILITY: asphalt paving company; RULES VIOLATED: 30 TAC §335.4(1) and TWC, §26.121(a), by failing to prevent the discharge of industrial waste into or adjacent to waters in the state; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $7,350; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: M & K Pantry, L.C. dba Lumberton Chevron and dba M & K Pantry 4; DOCKET NUMBER: 2004-0675-PST-E; TCEQ ID NUMBER: RN101893188 (Lumberton Chevron) and RN102444890 (M & K Pantry 4); LOCATION: 11335 Highway 96 South, Lumberton, Hardin County (Lumberton Chevron) and 210 Highway 96 South, Silsbee, Hardin County (M & K Pantry 4); TYPE OF FACILITY: retail sales of gasoline products (Lumberton Chevron and M & K Pantry 4); RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment by performing testing at least once every 12 months or upon major system replacement or modification (Lumberton Chevron); 30 TAC §115.242(3) and (5) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system, and to make all necessary repairs, replacements or adjustments to faulty equipment (Lumberton Chevron); 30 TAC §115.248(1) and (2) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the trained employee, and to make each current employee aware of the purpose and correct operation of the Stage II equipment (Lumberton Chevron); 30 TAC §115.222(1) and THSC §382.085(b), by failing to ensure that each UST is equipped with a submerged fill pipe (Lumberton Chevron); 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip the regular unleaded UST system with overfill prevention equipment (Lumberton Chevron); 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs (Lumberton Chevron); 30 TAC §334.50(b)(1)(A), (2) and (2)(A)(i)(III) and TWC, §26.3475(a) and (c), by failing to ensure that all USTs are monitored for releases at a frequency of at least once every month, to provide proper release detection for the product piping associated with the UST system, and to conduct an annual performance test for line leak detectors on pressurized piping (Lumberton Chevron); 30 TAC §334.10(b), by failing to develop and maintain all required UST records (M & K Pantry 4); 30 TAC §334.49(a), and TWC §26.3475(d), by failing to provide a method of corrosion protection for the UST system (M & K Pantry 4); and 30 TAC §334.72(3), by failing to report a suspected UST system release to the agency within 24 hours when monitoring results from a release detection method indicate that a release may have occurred (M & K Pantry 4); PENALTY: $21,825; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Michael Soza dba Water Valley Water Co-Op; DOCKET NUMBER: 2008-0993-PWS-E; TCEQ ID NUMBER: RN101451110; LOCATION: south of State Highway 71, approximately one mile east of Wolf Lane, east of Garfield, near the City of Cedar Creek, Travis County; TYPE OF FACILITY: public water supply for compensation; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 92270030 for Fiscal Years 2003 - 2008 to the TCEQ; PENALTY: $1,630; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL

OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(9) COMPANY: Parrish Machine and Service, Inc.; DOCKET NUMBER: 2007-1762-IHW-E; TCEQ ID NUMBER: RN100622901; LOCATION: 7419 Avenue O, Houston, Harris County; TYPE OF FACILITY: machine shop; RULES VIOLATED: 30 TAC §335.431(c) and 40 CFR §268.50(a)(2), by failing to prevent the storage of hazardous waste restricted from land disposal without a permit for over one year; 30 TAC §335.431(c) and 40 CFR §268.7(a)(2), by failing to properly complete the land disposal restriction notification for the initial shipment of spent chromic acid bath (WS 0001103H) on December 15, 2006 (Manifest Number 00035731); and 30 TAC §335.62 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications; PENALTY: $13,950; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(10) COMPANY: Pencco, Inc.; DOCKET NUMBER: 2007-0941-MSW-E; TCEQ ID NUMBER: RN101629970; LOCATION: 600 Russ Avenue, Sinton, San Patricio County; TYPE OF FACILITY: ferrous sulfate manufacturing facility; RULES VIOLATED: 30 TAC §324.1 and 40 CFR §279.22(b), by failing to store used oil in containers that did not leak and that were in good condition; 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to label or mark used oil containers with the words "Used Oil"; PENALTY: $8,450; STAFF ATTORNEY: Mary Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200900526
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 23, 2009.** 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.

Copies 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 23, 2009.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: AZY Corporation, Inc.; DOCKET NUMBER: 2008-1279-PST-E; TCEQ ID NUMBER: RN102893492; LOCATION: 14623 Buffalo Speedway, Houston, Harris County; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove two underground storage tanks from service; PENALTY: $5,250; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Afzal Shekhani dba Bender Texaco; DOCKET NUMBER: 2006-1565-PST-E; TCEQ ID NUMBER: RN101259067; LOCATION: 2002 Aldine Bender Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition and free of defects; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to test the line leak detectors at least once per year for performance and operational reliability and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow through for the month plus 130 gallons; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs) involved in the retail sale of petroleum substances used as a motor fuel; PENALTY: $11,000; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Cardinal Meadows Improvement District; DOCKET NUMBER: 2008-0117-MWD-E; TCEQ ID NUMBER: RN104416417; LOCATION: corner of Smokey Lane and Hildebrandt Road, Jefferson County; TYPE OF FACILITY: sewage collection system with the main lift station; RULES VIOLATED: 30 TAC §317.3(e)(5) and TCEQ Agreed Order Docket Number 2005-1866-MWD-E, Ordering Provision Number 2.a., by failing to provide operational audiovisual alarms at the Number 1 and 3 lift stations; and 30 TAC §317.3(c)(2) and TCEQ Agreed Order Docket Number 2005-1866-MWD-E, Ordering Provision Number 2.b., by failing to provide a firm pumping capacity, defined as total station maximum pumping capacity with the largest pump out of service, at the Number 1 and 2 lift stations; PENALTY: $19,880; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: IZR Corporation dba Garland Fina; DOCKET NUMBER: 2007-0409-PST-E; TCEQ ID NUMBER: RN101551299; LOCATION: 3101 Saturn Road, Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify the proper operation of the Stage II equipment; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain records on-site and then make them immediately available for review; and 30 TAC §334.8(c)(5)(B)(ii) and TWC, §26.3467(a), by failing to renew a delivery certificate; PENALTY: $11,102; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: James Luckey and John Luckey; DOCKET NUMBER: 2007-1646-MLM-E; TCEQ ID NUMBER: RN105007025; LOCATION: Private Road 5210, Jasper County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: $4,450; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Jesus Garcia; DOCKET NUMBER: 2008-0646-MSW-E; TCEQ ID NUMBER: RN104688874; LOCATION: two miles north of Falfurrias on County Road 410, Jim Wells County; TYPE OF FACILITY: unauthorized municipal solid waste disposal operation; RULES VIOLATED: 30 TAC §330.15(c), and TCEQ Default Order 2006-0078-MSW-E, Ordering Provision Number 2.a., b., and c., by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $3,900; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: John C. Moore dba Moores Water System; DOCKET NUMBER: 2008-1040-PWS-E; TCEQ ID NUMBER: RN102682291; LOCATION: 476 Beaver Lane, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b), §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Compliance Report (CCR) to each bill paying customer by July 1st of each year, and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 91550127 for Fiscal Year 2008 to the TCEQ; PENALTY: $1,674; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: John R. Eggen; DOCKET NUMBER: 2008-0969-WOC-E; TCEQ ID NUMBER: RN103243184; LOCATION: Cottonwood Creek Mobile Home Park, 404 Greene Road, Lancaster, Dallas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and THSC, §341.034(b), by failing to maintain a valid, effective public water system operator license issued by the commission prior to performing process control duties for the production and distribution of drinking water; PENALTY: $328; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-6393; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Karl Tatsch dba Hill Country Cleaners and Laundry and dba Hill Country Cleaners; DOCKET NUMBER: 2007-2031-DCL-E; TCEQ ID NUMBER: RN104089891 and RN103958807; LOCATION: 605 Sheffield Avenue, Llano, Llano County (Facility 1) and 800 Beesmer Avenue, Suite #1, Llano, Llano County (Facility 2); TYPE OF FACILITY: dry cleaning facility (Facility 1) and dry cleaning drop station (Facility 2); RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew Facility 1's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning facility for Fiscal Year 2008; 30 TAC §337.11(e) and THSC, §374.102, by failing to renew Facility 2's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station for Fiscal Year 2008; and 30 TAC §337.14(c), TWC, §5.702, and TCEQ Agreed Order Docket Number 2006-0919-DCL-E, Ordering Provision Number 1, 2.a., and 2.b., by failing to pay registration fees and associated late fees to TCEQ Financial Account Number 24000502 and by failing to pay an administrative penalty assessed by TCEQ Agreed Order Docket Number 2006-0919-DCL-E; PENALTY: $350; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: Myung & Choon Kim, Inc. dba Town & Country Cleaners and dba Viking Cleaners; DOCKET NUMBER: 2006-1265-DCL-E; TCEQ ID NUMBER: RN104094933 and RN100795848; LOCATION: 820 East Cartwright Road, Suite 131, Mesquite, Dallas County (Town & Country Cleaners) and 8936 Lake June Road, Dallas, Dallas County (Viking Cleaners); TYPE OF FACILITY: dry cleaning drop station (Town & Country Cleaners) and dry cleaning drop station (Viking Cleaners); RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew Town & Country Cleaners' registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station facility; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew Viking Cleaners' registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station facility; PENALTY: $2,370; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: New Star Holdings, L.L.C. dba Friendswood Texaco 106 aka Friendswood Shell and Northstar Equities, Inc.; DOCKET NUMBER: 2008-0879-PST-E; TCEQ ID NUMBER: RN101803757; LOCATION: 4550 Farm-to-Market Road 2351, Friendswood, Harris County; TYPE OF FACILITY: convenience station with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them available for inspection upon request by agency personnel; 30 TAC §115.242(1)(C), (3)(L), and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems, and 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; 30 TAC §115.248(2) and THSC, §382.085(b), by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,725; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Shawn Horvath dba Aero Valley Water Service; DOCKET NUMBER: 2008-0962-PWS-E; TCEQ ID NUMBER: RN101198331; LOCATION: east of Interstate 35 West, 1/2 mile south of Farm-to-Market Road 1171 on Cleveland Gibbs Road, Northwest Regional Airport, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of July - December 2007, and by failing to provide public notification of the failure to sample for the months of July - December 2007; 30 TAC §290.109(c)(3)(A)(ii) and §290.3122(c)(2)(A), by failing to collect a set of repeat samples within 24 hours of being notified of a total coliform-positive sample result and by failing to provide public notification of the failure to collect repeat water samples for the month of March 2008; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or deliver one copy of the CCR to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6), by failing to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account Number 90610243 for Fiscal Years 2003 - 2008; PENALTY: $5,133; STAFF ATTORNEY: Tommy Henson, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Shobhana Patel dba Bear Food Mart; DOCKET NUMBER: 2008-0123-PST-E; TCEQ ID NUMBER: RN102447844; LOCATION: 1200 La Salle Avenue, Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank records and make them immediately available for inspection upon request by agency personnel; PENALTY: $1,600; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200900525
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2009

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with 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 23, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/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 S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/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 S/DO shall be sent to the attorney designated for the S/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 23, 2009**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Dahisar Business, Inc. dba Honey Stop 2; DOCKET NUMBER: 2006-0603-PST-E; TCEQ ID NUMBER: RN102253242; LOCATION: 1012 Park Avenue, Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a delivery certificate by submitting a new underground storage tank (UST) registration and self-certification form 30 days before the expiration of the delivery certificate; 30 TAC §334.50(a)(1)(A) and §334.48(c), TWC, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment as ordered by Ordering Provision Number 2.b.i. of Agreed Order Docket Number 2004-1641-PST-E effective on August 20, 2005; 30 TAC §334.50(d)(1)(B) as ordered by Ordering Provisions 2.a. of Agreed Order Docket Number 2004-1641-PST-E effective on August 20, 2005, by failing to conduct effective manual or automatic inventory control procedures; 30 TAC

§37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §115.226(1), by failing to maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility; PENALTY: $37,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200900527
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 10, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of February 2, 2009 through February 5, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 185 has applied for a renewal of TPDES Permit No. WQ0014704001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 0.8 mile east and 0.2 mile north of the intersection of Greenbusch Road and Gaston Road in Fort Bend County, Texas.

CITY OF SWEETWATER has applied for a renewal of TPDES Permit No. WQ0010373002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The facility is located on County Road 109, 0.6 mile north of the intersection of Farm-to-Market Road 1856 and Interstate Highway 20 in Nolan County, Texas.

ENTERPRISE PRODUCTS OPERATING LLC which operates Morgan's Point Complex, an organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0000440000, which authorizes the discharge of process wastewater, storm water, cooling tower blowdown, demineralizer regenerate wastewater, domestic wastewater, pressure washwater, water from steam traps, air compressor condensate, and water from the bottom of the methanol still column at a daily average flow not to exceed 310,000 gallons per day via Outfall 001; and the discharge of once-through non-contact cooling water, pressure washwater, water from steam traps, air compressor condensate, and storm water at a daily average dry weather flow not to exceed 150,000 gallons per day via Outfall 002; and the discharge of once-through non-contact cooling water, pressure washwater, steam traps, air compressor condensate, settled Channel Water Authority water from the pigging line, and storm water at a daily average dry weather flow not to exceed 600,000 gallons per day via Outfall 003. The facility is located at 1200 North Broadway, approximately one-half mile north of the intersection of North Broadway Street and West Barbours Cut Boulevard, in the city of Morgan's Point, Harris County, Texas.

ALTURA POWER LP which operates a lignite fired steam electric generating station, has applied for a major amendment to TPDES Permit No. WQ0002877000 to increase the daily maximum flow at Outfall 002 to 3,000,000 gallons per day. The current permit authorizes the discharge of coal pile runoff and storm water from the coal facility on an intermittent and flow variable basis via Outfall 001; low volume waste, cooling tower blowdown and storm water runoff at a daily maximum dry weather flow not to exceed 1,500,000 gallons per day via Outfall 002; and storm water runoff from the ash storage area on an intermittent and flow variable basis via Outfall 003. The facility is located approximately one (1) mile east of the Town of Hammond and approximately eight (8) miles north (via State Highway 6) of the City of Calvert, Robertson County, Texas.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment to the current permit 4211-000 issued December 12, 2008, of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to Luminant Mining Company LLC, 500 North Akard Street, Dallas, Texas 75201, which operates the Monticello-Thermo Lignite Mining Area, to replace the incorrect permit expiration date of January 1, 2006 with the correct expiration date of January 1, 2011. Also, the current permit has been updated to include the current Definitions and Standard Permit Conditions (Boiler Plate; pages 3-11), and the permittee's new name and mailing address. The current permit issued under TXU Mining Company, c/o Timothy O'Shea, Ph.D., Environmental Services, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, authorizes the discharge of mine drainage and surface runoff from the active mining area, groundwater, and pretreated and previously monitored effluents (surface runoff from post mining areas and previously monitored Outfall 001 effluent on an intermittent and flow variable basis via Outfall 101 and treated domestic wastewater at a daily average flow not to exceed 2,600 gallons per day via Outfall 201) on an intermittent and flow variable basis via Outfall 001. The facility is located on State Highway 11, approximately 2.5 miles southeast of the intersection of State Highway 11 and Interstate Highway 30, Hopkins County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION HOUSTON DISTRICT (Pasadena), which operates the Texas Department of Transportation - Houston District (Pasadena) Municipal Separate Storm Sewer System, has applied for a renewal of NPDES Permit No. TXS001701. The draft permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004520000, would authorize storm water point source discharges to surface water in the state from the Texas Department of Transportation - Houston District (Pasadena) Municipal Separate Storm Sewer System. This permit will be reissued as TPDES Permit No. WQ0004520000 (TXS001702). The municipal separate storm sewer system is located within the corporate boundary of the City of Pasadena, Harris County, Texas.

CITY OF LOTT has applied for renewal of TPDES Permit No. WQ0010017001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on the northwest side of the City of Lott on Avenue "G" between Bone Branch and the Southern Pacific Railroad in Falls County, Texas.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to City of Port Arthur to change the TPDES permit number that was inadvertently listed as WQ0010364001 to WQ0010364009. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on Pleasure Island adjacent to the Sabine-Neches Waterway,

approximately 1.6 miles northeast of the Gulfgate Bridge in Jefferson County, Texas.

THE CITY OF GIDDINGS has applied for a renewal of TPDES Permit No. WQ0010456001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located on the south side of Farm-to-Market Road 2440, approximately one mile west of the intersection of Farm-to-Market Road 2440 and U.S. Highway 77 in Lee County, Texas.

CITY OF GRAFORD has applied for a renewal of TPDES Permit No. WQ10722001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 111,000 gallons per day. The facility is located approximately 1500 feet northwest of the intersection of Farm-to-Market Road 4 and State Highway Spur 397, approximately 1300 feet west of Farm-to-Market Road 4 in Palo Pinto County, Texas.

CITY OF LEVELLAND has applied for a renewal of Permit No. WQ0010965001, which 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 waters in the State. The wastewater treatment facility and disposal site are located approximately 2 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.

BISHOP CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011754001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located northeast of the intersection of County Road 22 and Farm-to-Market Road 665 in the Town of Petronila in Nueces County, Texas.

CNL INCOME SPLASHTOWN LLC AND PARC SPLASHTOWN LLC has applied for a renewal of TPDES Permit No. WQ0011886001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 1,400 feet west of Interstate Highway 45 and 3,000 feet south of Spring-Cypress Road near the City of Spring in Harris County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 146 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0014455001 to change the interim I phase flow from 150,000 gallons per day to 300,000 gallons per day and interim II phase flow from 300,000 gallons per day to 450,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2,400 feet west-northwest of the intersection of Morton Road and the Grand Parkway and approximately 600 feet north of Morton Road in Fort Bend County, Texas.

WOODMERE DEVELOPMENT CO. LTD has applied for a renewal of TPDES Permit No. WQ0014697001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located approximately 2,600 feet north of Highway 90 and approximately 2,000 feet west of the San Jacinto River in Harris County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014924001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 0.5 mile east-northeast of the intersection of Interstate Highway 45 and Cypress Creek in Harris County, Texas.

CITY OF PATTON VILLAGE has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014926001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility will be located within the city limits of Patton Village, approximately 550 feet west of the intersection of South Lakeview Drive and Lakeview Drive, in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200900557
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2009

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 6, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Salt Fork Underground Water Conservation District; SOAH Docket No. 582-09-0132; TCEQ Docket No. 2007-0766-DIS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Salt Fork Underground Water Conservation District on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900560
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2009

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 10, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Gwen Gordan and Wanda Percy dba Holliday Cafe; SOAH Docket No. 582-08-1691; TCEQ Docket No. 2007-0741-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gwen Gordan and Wanda Percy dba Holliday Cafe on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should

be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900561
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2009

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request to renew the Community Living and Support Services (CLASS) program. The CLASS program is a Medicaid home and community-based services waiver program under the authority of Title XIX, Section 1915(c), of the Social Security Act. The current waiver will expire August 31, 2008. The proposed effective date for the renewal is September 1, 2009.

The CLASS program provides individualized home and community-based services and supports to individuals living in their own or their families' homes and who have severe chronic disabilities closely related to mental retardation. Individuals must meet the requirements for admission to an intermediate care facility for individuals with mental retardation (ICF-MR) and must also meet financial eligibility requirements.

Services include case management, adaptive aids and medical supplies, habilitation, minor home modifications, nursing services, occupational therapy, physical therapy, speech therapy, specialized therapies, behavioral support services, respite, and transition assistance.

HHSC will request that the waiver renewal be approved for an additional five year period beginning September 1, 2009, and extending through August 31, 2014. When compared to the costs of serving individuals in ICFs-MR, this waiver maintains cost neutrality for waiver years 2009 through 2014.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-600, Austin, Texas 78708-5200, by phone at (512) 491-1152, by fax at (512) 491-1953, or by e-mail at christine.longoria@hhsc.state.tx.us.

TRD-200900442
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 4, 2009

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Texas Department of Insurance

Company Licensing

Application to change the name of AIG ANNUITY INSURANCE COMPANY to WESTERN NATIONAL LIFE INSURANCE COMPANY, a domestic life company. The home office is in Houston, TX.

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, M/C 305-2C, Austin, Texas 78701.

TRD-200900551
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 11, 2009

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Texas Lottery Commission

Instant Game Number 1152 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1152 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1152 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1152.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL, and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1152 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00, or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00, or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1152), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1152-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1152 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal fourteen (14) symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals four (4) beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed, or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching three (3) of the four (4) symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all four (4) symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least eight (8), but no more than twelve (12), CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1152. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1152 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	1,451,520	6.94
$4	322,560	31.25
$7	282,240	35.71
$10	181,440	55.56
$17	161,280	62.50
$20	161,280	62.50
$30	15,288	659.34
$33	10,500	960.00
$50	8,568	1,176.47
$80	8,400	1,200.00
$300	4,200	2,400.00
$3,000	92	109,565.22
$33,000	20	504,000.00

*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 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1152 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1152, 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-200900443
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 5, 2009

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North Central Texas Council of Governments

Request for Proposals to Perform the Dallas-Garland Road Vision Study

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to perform the Dallas-Garland Road Vision Study which will:

1) Develop a circulation vision for the Garland Road corridor that provides guidance for future thoroughfare planning and context sensitive design of transportation networks in the study area;

2) Develop a future land use development vision that provides policy guidelines for land use patterns in the study area and provides a quantitative basis for future transportation, housing, infrastructure, and economic development in the study area, and;

3) Develop a strategic opportunity vision that identifies viable areas and that will serve as a catalyst for the study area.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, March 20, 2009, to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to

such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200900545
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 10, 2009

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North East Texas Regional Mobility Authority

Notice of Availability of Request for Proposals to Provide Underwriting Services

The North East Texas Regional Mobility Authority ("NET RMA"), a political subdivision of the State of Texas, is soliciting statements of interest and qualifications from investment banking firms interested in providing the NET RMA with underwriting services in connection with the proposed financing of the Loop 49 toll project ("Toll 49") and any other project financing that the NET RMA may elect to execute during the term of the engagement. It is the intent of the NET RMA to select and designate a pool of investment banking firms from which to assign firms, as needed, to underwrite financings or provide other debt management related services.

A request for proposals ("RFP") packet may be obtained electronically from the NET RMA website at www.netrma.org. Copies will also be available by contacting the NET RMA at (903) 595-6585. Periodic updates, addenda, and clarifications may be posted on the NET RMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the North East Texas Regional Mobility Authority, 305 S. Broadway Avenue, Ste. 100, Tyler, Texas 75702 by 3:00 p.m. CST, March 9, 2009, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFP. The final selection of firms for inclusion in the pool, if any, will be made by the NET RMA Board of Directors.

TRD-200900556
Jeff Austin, III
Chairman
North East Texas Regional Mobility Authority
Filed: February 11, 2009

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Acceptance of Land Donation

Government Canyon State Park - Bexar County

In a meeting on March 26, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of approximately 3,000 acres adjacent to Government Canyon State Park in Bexar County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-200900530
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 10, 2009

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Notice of Proposed Real Estate Transaction

Acceptance of Land Donation

Possum Kingdom State Park - Palo Pinto County

In a meeting on March 26, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of approximately 350 acres adjacent to Possum Kingdom State Park in Palo Pinto County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-200900528
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 10, 2009

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Notice of Proposed Real Estate Transaction

Land Exchange

Caddo Lake State Park - Harrison County

In a meeting on March 26, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider exchanging approximately one acre of land for approximately one acre of land adjacent to Caddo Lake State Park in Harrison County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-200900529
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 10, 2009

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Notice of Proposed Real Estate Transaction

Land Purchase

Mission Tejas State Park - Houston County

In a meeting on March 26, 2009, the Texas Parks and Wildlife Commission (the Commission) will consider purchasing approximately one-fourth of an acre contiguous to the park entrance at Mission Tejas State Park in Houston County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlman, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-200900531
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 10, 2009

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Texas Department of Public Safety

Request for Qualifications

RFQ #405-HQ9-9053--Agreement for Internal Audit Services

PURPOSE

The Texas Department of Public Safety (TXDPS or Department) is seeking to enter into a contract, under which highly qualified auditors will provide governmental auditing, accounting expertise, and risk assessment services for fiscal years 2009-2013. The fiscal year for Texas state government begins on September 1st and ends on August 31st. The successful vendor will work with the Director of Audit and Inspection (Director or Project Manager) to do the following: a) complete certain internal audit projects; b) evaluate and contribute to the improvement of risk management and control processes within the Department; and c) provide internal auditing services to include risk assessments, informal and formal advice, analysis, or assessments of Department business processes, governance processes, and related controls.

BACKGROUND

The Office of Audit and Inspection plans and conducts internal audits evaluating the effectiveness, efficiency, and reliability of the Department's administrative, information technology, and accounting systems and controls. Due to staff retention issues in recent years, the fiscal year 2009 Internal Audit Plan cannot be completed without outsourcing. Furthermore, the function would benefit from ongoing outsourced support in fiscal years 2010-2013 as the Office of Audit and Inspection continues to provide the Department with internal auditing services. The Department is a dynamic organization that manages ever increasing challenges to its limited resources in the accomplishment of its operating objectives. It is imperative that the Department takes every opportunity to ensure its processes are as effective and efficient as possible and that systems and processes are appropriately controlled. A vendor is needed to provide auditing services on a broad range of operational/financial topics relative to the Department's business processes, governance processes, and related controls. In addition, the Department may seek an independent risk assessment of all Department programs and related auditable units. The purpose of such an assessment would be to develop the Department's annual internal audit plan.

REQUIREMENTS

The selected vendor must comply with the requirements of Chapter 2102 of the Texas Government Code (Internal Auditing) and §§411.241 - 411.243 of the Texas Government Code.

TXDPS is seeking highly qualified auditors to:

1. Complete approximately 900 hours of internal audit work planned for fiscal year 2009, on or before May 31, 2009. The initial objectives for this work have been established by the Director, as follows:

A. **Grant Cash Management Audit--**Perform a cash flow analysis of fiscal year 2008 grant expenditures and grant reimbursements. The cash flow analysis should include:

1. the number of days that appropriated funds were used pending grant reimbursement and make use of frequency distributions and histograms to report the results.

2. any other statistical analysis that, in the auditor's judgment, will aid management in understanding the nature of the Department's grant related cash management practices and cash flow.

Evaluate DPS cash management practices. Make recommendations for improving cash management practices and reducing the average time the Department must wait for grant reimbursements.

B. **Grant Acquisition Audit--**Evaluate the Department's grant acquisition processes. Specifically, how the Department identifies and applies for grants. Also, estimate the amount of grant funds the Department was eligible to apply for in fiscal year 2008 but did not.

C. **Grant Management Audit--**Evaluate the Department's internal controls relative to the compliance requirements for Federal programs and make recommendations for improvement. Determine whether the Department's grant management policies and procedures are adequate to provide reasonable assurance that:

1. Transactions are properly recorded and accounted for to:

a. Permit the preparation of reliable financial statements and Federal reports.

b. Maintain accountability over assets.

c. Demonstrate compliance with laws, regulations, and other compliance requirements.

2. Transactions are executed in compliance with:

a. Laws, regulations, and the provisions of grant agreements that could have a direct and material effect on a Federal program.

b. Any other laws, regulations that are identified in the A-133 Compliance Supplement.

3. Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Also, evaluate incidents of circumventing standard grant management policies and procedures as to frequency and appropriateness.

Identify significant risks associated with the Department's current grant management operating practices.

The vendor will be expected to keep the Director appropriately informed as the projects proceed and to complete the following:

* A preliminary assessment of the risks relevant to the activity to be audited.

* A refinement of the initial audit objectives based on the risk assessment.

* Establish the scope of the audit project.

* An audit program to complete the project.

* Conduct the audit by identifying, analyzing, evaluating, and recording sufficient reliable information to support conclusions reached.

* Write a report on the audit findings to include a background section and an audit results section, including any audit recommendations developed and a section that concisely states the audit objective(s), audit scope, and the audit methodologies used to complete the project.

The Director will present the report to TXDPS management and the Texas Public Safety Commissioners and solicit their responses to any audit recommendations developed.

2. Upon request, provide internal auditing services to include the following in accordance with Chapter 2102 of the Texas Government Code (Internal Auditing) and §§411.241 - 411.243 of the Texas Government Code:

(A) review operations to ensure the operations are conducted efficiently, uniformly, and in compliance with established procedures;

(B) make recommendations for improvements in operational performance;

(C) promote economy, effectiveness, and efficiency within the department;

(D) prevent and detect fraud, waste, and abuse in department programs and operations;

(E) make recommendations about the adequacy and effectiveness of the Department's system of internal control policies and procedures;

(F) advise in the development and evaluation of the department's performance measures;

(G) review actions taken by the department to improve program performance and make recommendations for improvement;

(H) review and make recommendations to TXDPS, so TXDPS can make recommendations to the Public Safety Commission and the legislature regarding rules, laws, and guidelines relating to department programs and operations;

(I) keep TXDPS fully informed of problems in department programs and operations, so TXDPS can inform the Public Safety Commission, the TXDPS director, and the legislature;

(J) coordinate with the TXDPS Project Manager so TXDPS can ensure effective coordination and cooperation among the State Auditor's Office, legislative oversight committees, and other governmental bodies while attempting to avoid duplication; and

(K) any other auditing services authorized by Chapter 2102 of the Texas Government Code, including, but not limited to, assurance services, financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and investigations.

(L) perform a risk assessment, for internal audit planning purposes, to include all Department programs and their auditable units.

TXDPS reserves the right to change the deadlines listed herein.

Although TXDPS intends to make an award to one Respondent pursuant to this Request for Qualifications (RFQ), such contract will be non-exclusive.

In the event of a conflict between this notice and the posting on the Electronic State Business Daily (ESBD), the posting on the ESBD controls.

PROCUREMENT PROCESS

Schedule

The anticipated schedule of events pertaining to this RFQ is as follows:

Posting of the RFQ on the ESBD--February 11, 2009

Texas Register Publication--February 20, 2009

Questions due--February 20, 2009

Official Responses to Questions posted--February 24, 2009

Responses due--March 6, 2009

Contract Execution--March 23, 2009, or as soon thereafter as practical

Inquiries and other Correspondence

Questions concerning this RFQ must be directed **in writing only via e-mail** to the appropriate TXDPS Point of Contact. Questions regarding the RFQ must clearly identify which section and paragraph of the RFQ is being referenced. Questions received after **February 20, 2009** at 3:00 p.m. will not be answered. Verbal inquiries are not acceptable and will receive no response.

Responses to Inquiries and Addenda

Questions and answers from this RFQ will be posted on the Texas Marketplace, ESBD website at http://esbd.cpa.state.tx.us/ as time permits, but no later than **February 24, 2009** at 5:00 p.m. When contacting the ESBD, Respondents must search under RFQ #405-HQ9-9053.

TXDPS reserves the right in its sole discretion to amend this RFQ to clarify, revise, supplement or delete any provision or to add new provisions. In the event that a revision of the RFQ becomes necessary, addenda will be posted on the Texas Marketplace, ESBD website at http://esbd.cpa.state.tx.us/. It is the responsibility of Respondents to check this site frequently for amendments and/or addenda to the RFQ.

TXDPS Point of Contact

Any parties interested in obtaining a complete copy of this RFQ should go to the ESBD website at http://esbd.cpa.state.tx.us/ and download it or contact the TXDPS Point of Contact below. Any correspondence regarding procurement issues (including cost, responses, etc.) for this RFQ prior to the award of any contract shall be made to the TXDPS Point of Contact below in writing only via e-mail. Specify "RFQ #405-HQ9-9053" in the subject.

TXDPS Point of Contact: Ray Miller, CTPM, Purchaser IV

TEXAS DEPARTMENT OF PUBLIC SAFETY

Accounting and Budget Control--Purchasing

5805 North Lamar Blvd., MSC 0130

Austin, Texas 78752

Phone: (512) 424-2205

Fax: (512) 424-2546

E-mail: ray.miller@txdps.state.tx.us

Evaluation Criteria and Scoring

Responses will be evaluated under the evaluation criteria outlined in the complete RFQ posted on the ESBD website at http://esbd.cpa.state.tx.us/. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. TXDPS shall not pay for any costs incurred by any entity in responding to this Notice or the RFQ.

TRD-200900550
Stanley E. Clark
Director
Texas Department of Public Safety
Filed: February 11, 2009

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 2, 2009, VTX Communications, LP filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60820. Applicant intends to reflect a change in corporate restructuring and a name change.

The Application: Application of VTX Communications, LP for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36662.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 25, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36662.

TRD-200900460
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2009

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 2, 2009, VTX Telecom, LP filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60482. Applicant intends to reflect a change in corporate restructuring and a name change.

The Application: Application of VTX Telecom, LP for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36663.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 25, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36663.

TRD-200900461
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2009

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 2, 2009, VOIP Telecom Connections, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60547. Applicant intends to reflect a change in ownership/control and a name change.

The Application: Application of VOIP Telecom Connections, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36664.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 25, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36664.

TRD-200900462
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2009

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on February 6, 2009, for an amendment to certificated service area boundaries within Zapata County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Zapata County. Docket Number 36673.

The Application: The proposed boundary change is for release of territory from AEP Texas Central Company to Medina Electric Cooperative, Inc. so that Medina Electric can serve multiple landowners who desire electric service to be provided to their ranches. Medina Electric's existing facilities are better positioned to provide service at the least cost. AEP Texas Central has provided a letter of concurrence with the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 27, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36673.

TRD-200900538
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 10, 2009

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Notice of Application to Amend Certificated Service Area Boundaries in Webb County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on February 3, 2009, for an amendment to certificated service area boundaries within Webb County, Texas.

Docket Style and Number: Joint Application of Medina Electric Cooperative, Inc. and AEP Texas Central Company to amend a Certificate of Convenience and Necessity for Service Area Boundaries within Webb County. Docket Number 36667.

The Application: The proposed boundary change is for release of territory from AEP Texas Central Company to Medina Electric Cooperative, Inc. so that Medina can serve a landowner who desires electric service to be provided to a ranch. Medina's existing facilities are better positioned to provide service at the least cost. AEP Texas Central has provided a letter of concurrence with the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 27, 2009 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936- 7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36667.

TRD-200900463
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 6, 2009

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The Texas A&M University System

Award Notification

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System has entered into a consulting contract for research consulting services. The consultant will assist with coordination of the development of the Good Manufacturing Practices (GMP) facility and related programs.

The Name and Address of Consultant is as follows: Laurus Partners, LLC, 7001 Preston Road, 5th Floor, Dallas, Texas 75205.

The A&M System will pay an amount of $42,000.00. The contract will begin on February 1, 2009 and shall terminitate in six months unless renewed for additonal months up to January 31, 2011.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than one year after completion of services.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, TX 77845, Voice: (979) 458-6410, E-mail: dbarwick@tamu.edu.

TRD-200900506
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: February 9, 2009

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Request for Proposals--Environmental Management System Consulting Services

RFP01 RSK-09-009

The Texas A&M University System (TAMUS) is seeking proposals from interested firms to provide Environmental Management System (EMS) Consulting Services and EMS Implementation Services for TAMUS and for participating TAMUS members under the direction and supervision of The TAMUS Office of Risk Management and Safety.

The RFP documentation may be obtained by contacting: Don Barwick, HUB and Procurement Manager, System Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845 or e-mail at dbarwick@tamu.edu.

The A&M System finds it of utmost importance to effectively plan and begin implementation of an EMS at each part of the A&M System, in accordance with A&M System Policy 24.04 Environment. As an agency of the State of Texas and as the institution chartered to be the teaching, research and extension voice for the environment in our state, it is vital for the A&M System to successfully manage its own environmental affairs and lead the state in environmental stewardship. To be better able to do this, the A&M System and its members must develop and operate environmental management systems that are consistent with accepted national and international standards. A consultant with experience in facilitating EMS planning and development in higher education, government and the private sector will provide such a needed service.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and, if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on March 10, 2009.

TRD-200900493
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: February 9, 2009

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Prairie View A&M University

Award of Major Consulting Contract

Prairie View A&M University ("University") entered into a contract for consulting services ("Contract") with PricewaterhouseCoopers LLP ("Consultant") as more particularly described in the Request for Proposal to provide proposals for Consulting Services, published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9167).

Project Description:

The selected Consultant will provide services to assist the University in an assessment of its College of Agriculture and Human Science operations ("CAHS"). The Consultant will identify opportunities to improve operating effectiveness and efficiency in non-faculty staff positions and processes; facilitate that salaries of CAHS employees are comparable with their appropriate market, either local or national, depending on the position and labor market; and identify opportunities to improve operating effectiveness and efficiency in grant compliance and reporting activities.

Name and Address of Consultant:

PricewaterhouseCoopers LLP

125 High Street

Boston, MA 02110-1707

Total Value of Contract:

The fees for the engagement will be $371,700

Contract Dates:

The Contract was executed on November 10, 2008. Services began on November 19, 2008. Services are expected to be complete in six to eight weeks. However, the contract will remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to the Consultant.

Dates on Which Documents, Films, Recordings, or Reports that Consultant is Required to Present are Due:

Upon completion of project, the Consultant will provide the reports with recommendations on Management Analysis; Compensation Market Assessment; and Grant Administration.

TRD-200900541
W. Kay Peavy
Manager of Procurement and Contracts
Prairie View A&M University
Filed: February 10, 2009

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).