TEXAS REGISTER

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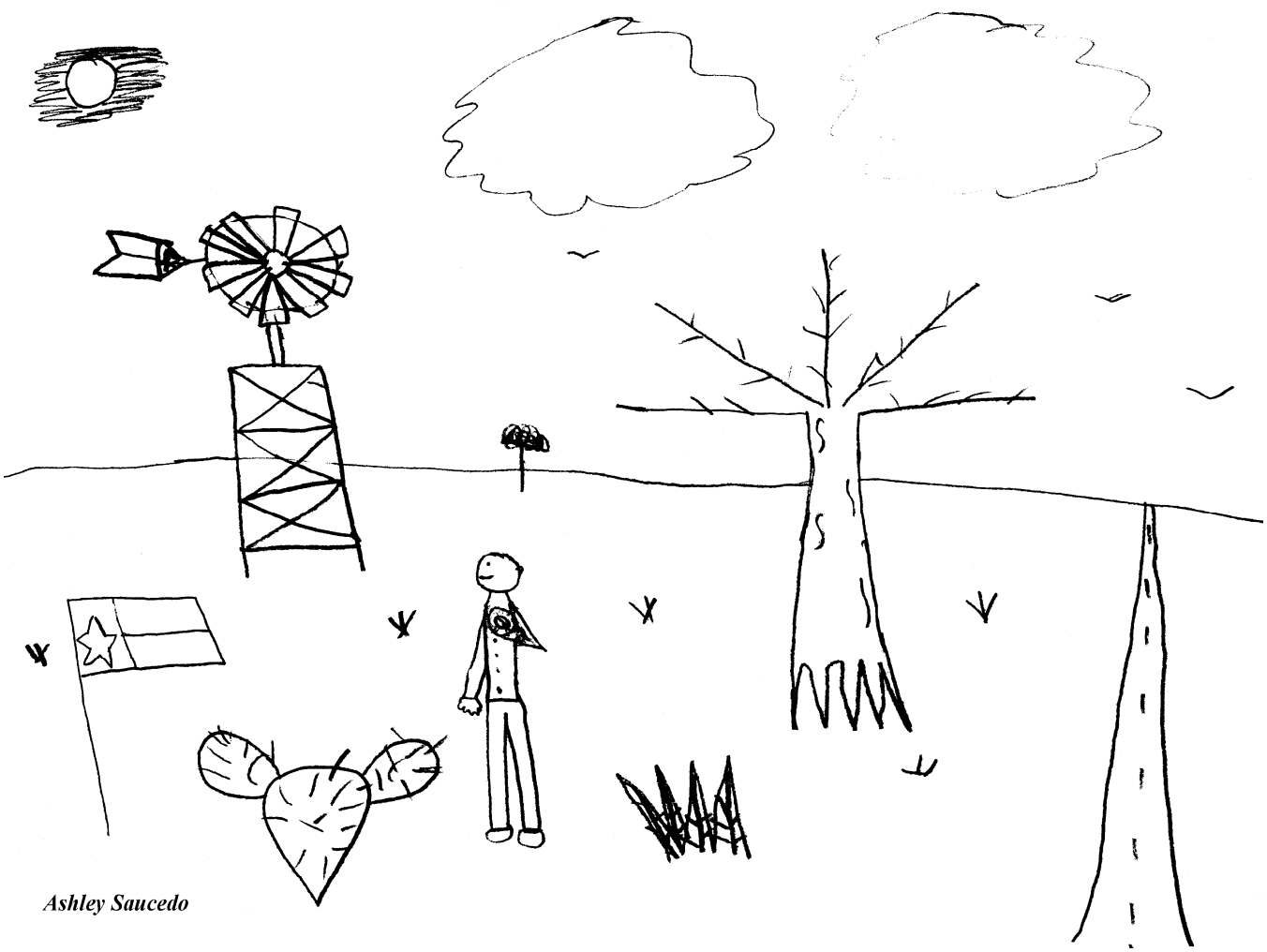

Ashley Saucedo

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

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

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In This Issue

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0232-KP

Requestor:

Mr. Tony Sims

Chambers County Auditor

Post Office Box 910

Anahuac, Texas 77514

Re: Whether a commissioners court may fund certain county departments through revenue generated by a sales and use tax imposed pursuant to chapter 324 of the Tax Code (RQ-0232-KP)

Briefs requested by June 25, 2018

RQ-0233-KP

Requestor:

The Honorable John Zerwas, M.D.

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Issues related to quorums and city council member absences (RQ-0233-KP)

Briefs requested by June 25, 2018

RQ-0234-KP

Requestor:

Mr. Charles G. Cooper

Banking Commissioner

Texas Department of Banking

2601 North Lamar Boulevard

Austin, Texas 78705

Re: Whether a funeral provider may infer a decedent's preferred method of disposition from the contents of a prepaid funeral contract (RQ-0234-KP)

Briefs requested by July 2, 2018

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

TRD-201802374
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 30, 2018

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 392. PURCHASE OF GOODS AND SERVICES FOR SPECIFIC HEALTH AND HUMAN SERVICES COMMISSION PROGRAMS

SUBCHAPTER C. AUTISM PROGRAM

1 TAC §392.203

The Texas Health and Human Services Commission (HHSC) proposes amendments to §392.203, concerning Staff Qualifications.

BACKGROUND AND PURPOSE

The amendments provide clarity for contractors regarding program manager requirements, and permit clinics to allow any board-certified behavior analyst (BCBA), in addition to the program manager, to provide to or oversee training of direct delivery staff. This will not change who can provide applied behavior analysis (ABA) or the qualifications of those staff. The Children's Autism Program has language in provider contracts that requires all contractors to ensure that personnel are qualified to perform services in accordance with their professional license or certification requirements. If additional direction is needed to implement Chapter 506, Occupations Code, regarding the licensing of behavior analyst and assistant behavior analyst, the Children's Autism Program will amend contracts to include any additional requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §392.203(a) clarifies that a contractor must have a program manager who provides the supervision of the staff as well as oversight of the assessment and treatment of children in the program.

The proposed amendment to §392.203(d), states that training to direct delivery staff can be provided or overseen by a board certified behavior analyst (BCBA).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the section will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of employee positions;

(3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule will not affect fees paid to the agency;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

SMALL AND MICRO-BUSINESS AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rule, as they will not be required to alter their business practices and the rule does not impose any additional costs on those required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this proposal because the rule does not impose a cost on regulated persons; is amended to reduce the burden or responsibilities imposed on regulated persons by the rule; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT

Lesley French, Associate Commissioner for Health, Developmental, and Independence Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit is that staff providing services under these contracts will be appropriately trained and supervised.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Joan Cooksey, Program Specialist, 1100 W. 49th Street, Mail Code 1938, Austin, Texas 78756; by fax to (512) 776-7162; or by e-mail to: HHSRulesCoordinationOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 18R007" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§392.203. Staff Qualifications.

(a) The contractor must have a program manager who provides the supervision of the staff and oversight of the assessment and [~~Contractor staff members who provide assessment and oversee~~] treatment of children. The program manager[~~, and who train and supervise paraprofessional personnel involved in direct service delivery~~] must have:

(1) a master's or doctoral degree from an accredited institution of higher education in psychology, behavior analysis, or a related field;

(2) documented graduate-level coursework in behavioral assessment and intervention, selecting outcomes and strategies, behavior change procedures, experimental methods, and measuring and interpreting behavioral data;

(3) at least one year of experience in providing services to children within the age range of 3 through 15 years of age with diagnoses on the autism spectrum;

(4) knowledge of typical child development for children 3 through 15 years of age; and

(5) a BCBA or BCBA-D certification.

(b) The DARS contractor must have at least one BCBA with one year of experience in providing services for each age covered in the range of 3 through 15 years of age with a diagnosis on the autism spectrum.

(c) All staff members who provide direct services to children must at a minimum:

(1) have a high school diploma; and

(2) be 18 years of age.

(d) All direct service staff members must receive training before working independently and on an ongoing basis. Training must:

(1) be formalized training developed and overseen by BCBA supervisors on methods for data collection, procedures for implementing discrete trial teaching, prompting procedures, behavior management strategies for addressing problem behavior, and other ABA techniques and program specific methods;

(2) be provided or overseen by a BCBA [~~or BCaBA~~] through didactic instruction, workshops, readings, observation of modeling of techniques by supervisors, role-play with supervisors, and training in the natural environment in which supervisors provide specific feedback and additional training as needed;

(3) be assessed for effectiveness through written exams (with criteria to determine mastery) or direct observation by BCBA supervisors of therapists working directly with children (with fidelity checklists to determine accurate use of procedures and criteria to determine mastery) to ensure individual acquisition of the skills necessary to accurately implement ABA treatments;

(4) cover all of the tasks in the Behavior Analyst Certification Board's Registered Behavior Technician Task List and Guidelines for Responsible Conduct for Behavior Analysts that have been designated as relevant for behavior technicians;

(5) have a cumulative duration of at least 40 hours;

(6) include ethics and professional conduct training; and

(7) include training on typical child development for children 3 through 15 years of age.

(e) All direct service staff members must be supervised by a BCBA or BCBA-D. Supervision must:

(1) occur at least once every two weeks;

(2) include direct observation of ABA programming to assess if procedures are implemented accurately and to inform the supervisor on the potential need to adjust teaching procedures; and

(3) include ongoing review, no less than two times per week, of data from ABA programs and data pertaining to problem behavior.

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

Filed with the Office of the Secretary of State on May 25, 2018.

TRD-201802349
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 776-2837

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The Texas State Securities Board proposes an amendment to §109.13(k), concerning limited offering exemptions. The proposal would amend subsection (k) so that the exemption only

applies to offers and sales of federal covered securities pursuant to Securities and Exchange Commission (SEC) Regulation D, Rule 506. Currently the exemption also applies to Rule 505 offerings. However, Rule 505 was repealed effective May 22, 2017. The rule proposal removes those provisions within the subsection that are applicable to only Rule 505 offerings or are duplicated elsewhere in Regulation D or in §114.4 (relating to federal covered securities). It also updates the rule to reflect the current practice followed by the Agency now that almost of the Form D filings are made through the EFD system.

Clint Edgar, Deputy Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to coordinate provisions of the rule with federal standards and requirements. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. The rule as proposed would not create a new regulation or expand, limit or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.

§109.13. Limited Offering Exemptions.

(a) - (j) (No change.)

(k) Limited [~~Uniform limited~~] offering exemption coordinating with SEC Regulation D, Rule 506. In addition to sales made under the Texas Securities Act, §5.I, the State Securities Board, pursuant to the Act, §5.T, exempts from the registration requirements of the Act, §7, any offer or sale of securities offered or sold in compliance with the Securities Act of 1933, Regulation D (17 C.F.R. §§230.500-230.508, as amended), Rule 506 [~~, Rules 230.505 and/or 230.506~~], including any offer or sale made exempt by application of Rule 508(a), [~~as made effective in United States Securities and Exchange Commission Release Number 33-6389 and as amended in Release Numbers 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6902, 33-6949, 33-6996, 33-7470, 33-8876, 33-8891, 33-9414, and 33-9415, and as adjusted by The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203,~~] and which satisfies the following further conditions and limitations.

[~~(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately registered in this state.~~]

[~~(2) No exemption under this subsection shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262, as made effective in United States Securities and Exchange Commission Release Number 33-6949:~~]

[~~(A) has filed a registration statement which is subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption;~~]

[~~(B) has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;~~]

[~~(C) is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption;~~]

[~~(D) is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;~~]

[~~(E) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.~~]

[(3) The prohibitions of paragraph (2)(A)-(C) and (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.]

[(4) Any disqualification caused by this subsection is automatically waived if the state securities administrator or Agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.]

(1) [(5)] In addition to the other requirements of this subsection, to claim this exemption, the [The] issuer must comply with notice filing provisions set out in §114.4(b)(1) of this title (relating to Filings and Fees) [shall file with the Securities Commissioner a notice on Form D].

[(A) The notice shall be filed no later than 15 days after the receipt of consideration or the delivery of a subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under Regulation D, Rule 230.503 to be filed with the Securities and Exchange Commission.]

[(B) The notice shall contain an undertaking by the issuer to furnish to the Securities Commissioner, upon written request, the information furnished by the issuer to offerees.]

[(C) Every person filing the initial notice on Form D shall pay a filing fee of 1/10 of 1.0% of the aggregate amount of securities described as being offered for sale, but in no case more than $500.]

[(D) The filing of Form D and the payment of the filing fee must be made electronically through the EFD System, when such system becomes available.]

[(6) In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied.]

[(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.]

[(B) The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.]

[(7) A failure to comply with a term, condition, or requirement of paragraphs (1) and (6) of this subsection will not result in loss of the exemption from the requirements of the Act, Section 7, for any offer or sale to a particular individual or entity if the person relying on the exemption shows:]

[(A) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and]

[(B) the failure to comply was insignificant with respect to the offering as a whole; and]

[(C) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraphs (1) and (6) of this subsection.]

[(8) Sales made pursuant to this subsection to nonaccredited investors must comply with the disclosure requirements of subsection (a)(1) of this section.]

(2) [(9)] Transactions which are exempt under this subsection may not be combined with offers and sales exempt under any other rule or section of the Act; however, nothing in this limitation shall act as an election. Should for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

[(10) The Securities Commissioner may, by rule or order, increase the number of purchasers or waive other conditions of this exemption.]

[(11) This limited offering transactional exemption is designed to further the objectives of compatibility with federal exemptions and uniformity among the states.]

[(12) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Texas Securities Act.]

(3) [(13)] In view of the objective of this subsection and the purposes and policies underlying the Texas Securities Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this subsection, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this subsection.

(4) [(14)] Nothing in this subsection is intended to relieve registered dealers, [salesmen,] or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.

(5) [(15)] [Review of Form D.]

[(A)] The staff of the State Securities Board will review all notice filings made under this subsection to determine if the correct filing fee was submitted [for completeness of the information required to be filed under this section]. If the staff determines that the fee paid was deficient, [a filing is incomplete in any material respect,] the staff will notify [within five days of receipt of the form issue a letter notifying] the filer through the EFD system or by email if the filing was not made through EFD [user of the form of the deficiency].

[(B)] A filer [user of this section] who receives such a notice [from the staff of a deficiency in a form filed under this section] may correct the deficiency within 30 days of the date that the notice [deficiency letter] is sent [issued] by the staff. If a timely correction is made, the filing shall be deemed to be complete and in compliance with the filing requirements as of the date the original filing was received.

[(C) In order to assist voluntary compliance within this subsection and to aid users in filing notices required under paragraph (5) of this subsection, the staff of the State Securities Board is available to answer questions about this regulation. Inquiries should be addressed to the Director of the Registration Division.]

[(16) If the securities comply with this subsection (except for paragraphs (1)-(6), (8), and (10) of this subsection) and are federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions), the issuer should refer to Chapter 114 of this title (relating to Federal Covered Securities) for the applicable filing and fee requirements. (Issuers are advised of their obligation to comply with the dealer and agent registration requirements of the Texas Securities Act and Board rules. See §114.4(g) of this title (relating to Filings and Fees).)]

(6) [(17)] [Issuers in Regulation D offerings.] When an offering is made in compliance with Regulation D of the SEC and the offering will be made by or through a registered securities dealer, the issuer and its directors, officers, agents, and employees may make themselves available to answer questions from offerees, as required by Rule 502(b)(2)(v) of Regulation D, without being required to register as securities dealers or agents under the Act, §12.

(l) (No change.)

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

Filed with the Office of the Secretary of State on May 23, 2018.

TRD-201802274
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 305-8303

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.5

The Texas State Securities Board proposes an amendment to §113.5, concerning financial statements, to add a new exemption to the list of types of prior securities offerings that would not disqualify a small business issuer from being eligible to file reviewed financial statements in a later registered offering.

Section 113.5 permits certain issuers whose previous sales of securities did not exceed $1 million to file reviewed financial statements for a registered offering that does not exceed $5 million. Section 7.A(1)(f)(2) of the Texas Securities Act permits the Board to define the term "small business issuer" and prescribe the circumstances under which such an issuer can submit reviewed (rather than audited) financial statements for a registration of securities by qualification.

Since the recently adopted crowdfunding exemption in §139.26, Intrastate Crowdfunding Exemption for SEC Rule 147A Offerings, will allow public solicitation or advertising by permitting potential investors to view the offerings on the Internet website of the dealer or Texas crowdfunding portal, the proposal would add the exemption set forth in §139.26 to the list of types of prior securities offerings that would not disqualify an issuer from being eligible to file reviewed financial statements in a subsequent registered offering.

Clint Edgar, Deputy Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that capital raising efforts of more small business issuers will be facilitated by allowing the use of reviewed financial statements in conjunction with a registered offering. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or limit or repeal an existing regulation. It expands an existing regulation to add a new exemption to the list of types of prior securities offerings that would not disqualify a small business issuer from being eligible to file reviewed financial statements in a later registered offering.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Articles 581-7.A and 581-28-1. Section 7.A(1)(f)(2) provides the Board with the authority to define and provide requirements for small business issuers permitted to submit reviewed financial statements. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-7 and 581-10.

§113.5. Financial Statements.

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

(c) Small business issuer. For purposes of subsection (b) of this section, the term "small business issuer" shall mean any corporation:

(1) that has not previously sold securities by means of an offering involving public solicitation or advertising unless such offering was made in compliance with:

(A) §139.25 of this title (relating to Intrastate Crowdfunding Exemption);

(B) §139.26 of this title (relating to Intrastate Crowdfunding Exemption for SEC Rule 147A Offerings);

(C) [~~(B)~~] §139.16 of this title (relating to Sales to Individual Accredited Investors);

(D) [~~(C)~~] §139.19 of this title (relating to Accredited Investor Exemption);

(E) [~~(D)~~] §109.4 of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors); or

(F) [~~(E)~~] the Texas Securities Act, Section 5.H;

(2) - (7) (No change.)

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

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

Filed with the Office of the Secretary of State on May 23, 2018.

TRD-201802275
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 305-8303

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The Texas State Securities Board proposes an amendment to §114.4, concerning filings and fees. The proposal would amend subsection (b)(1) to update a cross-reference to conform to the changes to §109.13(k), which are being concurrently proposed, and amend the rule to reflect that the EFD System is now operational.

Clint Edgar, Deputy Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that cross-references to other rules in the rule will be accurate. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.

§114.4. Filings and Fees.

(a) (No change.)

(b) Special circumstances.

(1) SEC Regulation D, Rule 506 offerings. In connection with an offering described in both §109.13(k)[~~(16)~~] of this title (relating to Limited Offering Exemptions) and SEC Regulation D, Rule 506, at the time the Form D is filed with the SEC, but no later than 15 days after the first sale of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(A) a notice on Form D; and

(B) a fee of one-tenth of 1.0% of the aggregate amount of federal covered securities described as being offered for sale, but in no case more than $500, as provided in the Texas Securities Act, Section 35.B(7).

(C) The filing of Form D and the payment of the filing fee shall be made electronically through the EFD System [~~, when such system becomes available~~].

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

(c) (No change.)

(d) Excess sales.

(1) (No change.)

(2) An offeror in an SEC Regulation D, Rule 506 offering, who paid less than the maximum fee prescribed in subsection (b)(1) of this section and offered a greater amount of federal covered securities than authorized may do the following:

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

(C) The filing of Form D and the payment of the filing fee shall be made electronically through the EFD System[~~, when such system becomes available~~].

(3) (No change.)

(e) - (i) (No change.)

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

Filed with the Office of the Secretary of State on May 23, 2018.

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Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.1, §115.3

The Texas State Securities Board proposes amendments to §115.1, concerning general provisions, and §115.3, concerning examinations. Subsection (a)(10) of §115.1 would be amended to add the Texas crowdfunding portals registered pursuant to §115.20 to the definition of "Texas crowdfunding portal" as that term is used in Chapter 115, Securities Dealers and Agents. Portals registered pursuant to §115.20 are those created by Section 44 of the Texas Securities Act as "authorized small business development entities." The portion of this definition that specifies the types of securities that may be offered on the portal's website would be removed from the definition since that limitation is already specified in §115.19 and §115.20. Subsection (b)(2)(A) of §115.1 would be amended to update a cross-reference to the federal Securities Exchange Act of 1934 to reflect the current location of the de minimus transactions provision that originated in the National Securities Markets Improvement Act of 1996 (NSMIA).

Subsection (c) of §115.1 would be amended to coordinate with the proposed amendments to §115.3, to automatically recognize uniform specialized knowledge examinations administered by the Financial Industry Regulatory Authority ("FINRA") as restricted registration categories.

Section 115.3 would be amended to simplify the examination structure and bring it in line with the examinations administered by FINRA, which has announced it will be restructuring the representative-level qualification examinations it administers effective October 1, 2018. FINRA created a general knowledge examination called the Securities Industry Essentials (SIE) examination which, when combined with certain other general or specialized knowledge examinations, fulfills the examination requirements for registration. The restructured program eliminates duplicative testing of general securities knowledge on certain representative-level qualification examinations by moving such content into the SIE and removing it from the associated co-examination.

As part of the examination restructuring, FINRA will be eliminating some of their specialized knowledge examinations. However, FINRA will be grandfathering and continuing the registration of those individuals who are currently registered in those restricted categories that correspond with the specialized knowledge examinations that will be eliminated. Likewise, persons maintaining a restricted registration in those categories in Texas will continue to be eligible for registration in Texas in that restricted capacity after the corresponding FINRA specialized knowledge examination is eliminated.

Clint Edgar, Deputy Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for each year of the first five years that §115.1 is in effect the public benefit anticipated as a result of enforcing it will be that it will properly reflect that authorized small business development entities created by Section 44 of the Texas Securities Act are included in the definition of "Texas crowdfunding portals" in the rules and that cross-references to other rules will be accurate. Mr. Edgar, Ms. Diaz and Mr. Yarroll also have determined that for each year of the first five years that §115.3 is in effect the public benefit anticipated as a result of enforcing it will be that the restructured examination program will more closely correspond to the uniform examinations administered by FINRA, maing it easier for applicants entering the securities industry in Texas to understand which examinations are required in the registration category they are pursuing. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rules will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rules are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment to §115.1 is also proposed under Texas Civil Statutes, Articles 581-12.C and 581-44. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 44 provides the Board with the authority to adopt rules to regulate and fa-

cilitate online intrastate crowdfunding applicable to authorized small business development entities.

The proposed amendment to §115.1 affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 591-15, 581-18, and 581-44.

The proposed amendment to §115.3 affects Texas Civil Statutes, Article 581-13.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Texas crowdfunding portal--Any person registered as a Texas dealer pursuant to §115.19 of this title (relating to Texas Crowdfunding Portal Registration and Activities) or §115.20 of this title (relating to Texas Crowdfunding Portal Registration and Activities of Small Business Development Entities) [~~that utilizes an Internet website to offer or sell securities that are exempt from securities registration solely pursuant to §139.25 of this title (relating to Intrastate Crowdfunding Exemption)~~].

(b) Registration requirements of dealers, issuers, agents, and branch offices.

(1) (No change.)

(2) Persons not required to register as an agent.

(A) Registration as an agent is not required for a person, associated with a dealer registered in Texas, who effects a transaction pursuant to the Securities Exchange Act of 1934, Section 15(i)(3), (15 U.S.C. Sec. 78o(i)(3)) [~~15(h)(3)~~], provided such person is:

(i) not ineligible to register with this state for any reason other than such a transaction; and

(ii) registered with a registered securities association and at least one other state.

(B) - (D) (No change.)

(c) Types of registrations.

(1) General registration. A general registration is a registration to deal in all categories of securities, without limitation.

(2) Restricted registration. The restricted registrations are as follows:

(A) The Securities Commissioner recognizes the specialized knowledge examinations administered by FINRA as restricted registration categories. The registration of an applicant passing a specialized knowledge examination in lieu of the general securities examination pursuant to §115.3(b) of this title (relating to Examinations) is restricted to and effective only for conducting the business and securities activities and effecting transactions associated with the specialized examination.

(B) Additional restricted registration categories include:

(i) [~~(A)~~] registration to deal exclusively in the sale of interests (other than interests in limited partnerships) in oil, gas, and mining leases, fees, or titles or contracts relating thereto;

[~~(B) registration to deal exclusively in municipal securities;~~]

(ii) [~~(C)~~]registration to deal exclusively in real estate syndication interests and/or condominium securities, including interests in real estate limited partnerships;

(iii) [~~(D)~~]registration to deal exclusively in sales of securities to the dealer's own employees;

[~~(E) registration to deal exclusively in securities issued by open-end investment companies registered under the Texas Securities Act and the Investment Company Act of 1940;~~]

(iv) [~~(F)~~]registration for an issuer to deal exclusively in its own securities;

[~~(G) registration to deal exclusively in options on foreign currencies;~~]

[~~(H) registration to deal exclusively in sales of securities in direct participation programs;~~]

[~~(I) registration to deal exclusively in government securities;~~]

[~~(J) registration to accept orders unsolicited by such person from existing customers of the dealer;~~]

[~~(K) registration to deal exclusively in corporate securities;~~]

[~~(L) registration to deal in all general securities except municipal securities;~~]

(v) [~~(M)~~] registration to act exclusively as a finder;

[~~(N) registration to deal exclusively in investment banking;~~]

(vi) [~~(O)~~] registration to act exclusively as a Texas crowdfunding portal; and

(vii) [~~(P)~~] registration with other restrictions which the Securities Commissioner may impose based upon the facts.

(3) (No change.)

(d) (No change.)

§115.3. Examination.

(a) Requirement.

(1) To determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities, the State Securities Board requires a written examination on general securities principles and on state securities law. Applicants must make a passing score, as determined by the North American Securities Administrators Association, FINRA, or the Securities Commissioner, as appropriate, on any required examination.

(2) If, at the time the applicant completes the examinations required in subsection (b) of this section, the Securities Industry Essentials (SIE) examination is coupled with the FINRA general or specialized knowledge examination for the registration category sought, the applicant must obtain a passing score on the SIE examination.

(b) Examinations accepted.

(1) Each applicant must pass an examination on general securities principles. This requirement is [~~may be~~] satisfied by passing the [~~an~~] examination on general securities principles administered by FINRA. As set forth in paragraph (3) of this subsection, applicants for restricted registrations may substitute a specialized knowledge [~~an~~] examination dealing with a particular type of security for an examination on general securities principles.

(2) The [~~For purposes of this subsection, the~~] Securities Commissioner recognizes the [~~following~~] general examinations administered by FINRA as an examination on general securities principles sufficient to meet that requirement in paragraph (1) of this subsection. [~~:~~]

[~~(A) Series 1--General Securities Examination;~~]

[~~(B) Series 2--FINRA Non-Member General Securities Examination; and~~]

[~~(C) Series 7--General Securities Representative Examination.~~]

(3) In lieu of an examination on general securities principles, an applicant may substitute one or more specialized knowledge examination(s) administered by FINRA. The [~~the~~] Securities Commissioner also recognizes the specialized knowledge examinations administered by FINRA as restricted registration categories. The registration of an applicant passing a specialized knowledge examination is restricted and effective only for conducting the business and securities activities and effecting transactions associated with the specialized examination.[~~following limited examinations, administered by FINRA, for the corresponding restricted registrations:~~]

[~~(A) for persons seeking a restricted registration to deal exclusively in securities issued by open-end investment companies registered under the Texas Securities Act or the Investment Company Act of 1940, the Series 6--Investment Company Products/Variable Contracts Representative Examination;~~]

[~~(B) for persons seeking a restricted registration to accept orders unsolicited by such person from existing customers of the dealer, the Series 11--Assistant Representative/Order Processing Examination;~~]

[~~(C) for persons seeking a restricted registration to deal exclusively in direct participation program securities, the Series 22--Direct Participation Programs Representative Examination;~~]

[~~(D) for persons seeking a restricted registration to deal exclusively in municipal securities, the Series 52--Municipal Securities Representative Examination;~~]

[~~(E) for persons seeking a restricted registration to deal exclusively in corporate securities, the Series 62--Corporate Securities Representative Examination;~~]

[~~(F) for persons seeking a restricted registration to deal in all general securities except municipal securities, either the Series 17--General Securities Representative Examination, the Series 37--General Securities Representative Examination, the Series 38--General Securities Representative Examination, or the Series 47--General Securities Representative Examination;~~]

[~~(G) for persons seeking a restricted registration to deal exclusively in investment banking; and~~]

[~~(H) for persons seeking a restricted registration to deal exclusively in government securities, the Series 72--Government Securities Representative Examination. A person registered on or before September 1, 1998, for the purpose of dealing exclusively in government securities, is not required to pass the Series 72 examination.~~]

(4) (No change.)

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on May 23, 2018.

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.33

The Texas State Securities Board proposes an amendment to §133.33, concerning uniform forms accepted, required or recommended. The proposal would amend subsection (c) to conform the cross-reference to be consistent with the proposed amendment to §109.13(k), which is being concurrently proposed. It would also update the reference to Form D to reflect the current title of this form.

Clint Edgar, Deputy Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar, Mr. Diaz, and Mr. Yarroll have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that cross-references contained in the rule will be accurate. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have determined that for the first five-year period the rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules

and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.

§133.33. Uniform Forms Accepted, Required, or Recommended.

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

(c) Section 109.13(k)[~~109.13(k)(5)~~] of this title (relating to Limited Offering Exemptions) and §114.4(b)(1) of this title (relating to Filings and Fees) require the filing of a Form D, "Notice of Exempt Offering of Securities." [~~"Notice of Sale of Securities Pursuant to Regulation D, §4(6), and/or Uniform Limited Offering Exemption."~~]

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

Filed with the Office of the Secretary of State on May 23, 2018.

TRD-201802278
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 305-8303

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.1

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.1, Reasonable Accommodation Requests. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.1. Reasonable Accommodation Requests.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802300
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.1

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.1, Reasonable Accommodation Requests to the Department. The purpose of the proposed new section is to make changes that include: minor changes to the description of the process, adding the Department's Fair Housing Manager in accommodation request decision-making, reflecting that accommodation requests do not have to be in writing, revising the title to make it clear these are only requests to the Department (not to our subrecipients), and providing the statutory authority and purpose of the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with Comptroller rules and increased clarity and organization. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.1. Reasonable Accommodation Requests to the Department.

(a) Purpose. The purpose of this section is to establish the procedures by which a Requestor may ask that a Reasonable Accommodation is made to the Department. For rules governing the handling of reasonable accommodation requests and responsibilities of entities receiving funds or resources from the Department see Subchapter B, §1.204 of this Chapter. This rule is statutorily authorized by Tex. Gov't Code, 2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs, and in accordance with the Fair Housing Act, and other federal and state civil rights laws.

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

(1) Board--Texas Department of Housing and Community Affairs Governing Board.

(2) Division Manager or Director--Department staff member supervising the division or area of a division containing the program for which a Reasonable Accommodation is being requested.

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, or as defined by other applicable federal or state law.

(4) Fair Housing Act--Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968.

(5) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(6) Requestor--Includes applicants, members of the public, clients of Department programs, and program participants.

(7) Section 504--Section 504 of the Rehabilitation Act of 1973, as amended.

(c) Procedures.

(1) The Requestor of the Reasonable Accommodation shall submit a request to the Division Manager or Director. A request does not have to be in writing. A request can be made in a face-to-face conversation with a Division Manager or Director or using any other method of communication. A request is any communication in which an individual clearly asks or states that they need the Department to provide or to change something because of a Disability.

(2) The request, whether oral or written, must contain, at minimum:

(A) The Department program or procedure for which an accommodation is being requested;

(B) Household information to include name and address;

(C) Description of the Reasonable Accommodation being requested; and

(D) Reason the Reasonable Accommodation is necessary.

(E) In the case of oral requests, the Division Manager or Director will create a written summary of the request.

(3) The Division Director will coordinate with the Fair Housing Manager and the supervising Deputy Executive Director/Chief, if any, and may ask for additional information from the Requestor. Staff should address Reasonable Accommodations requests promptly. If making such a Reasonable Accommodation would

involve incurring expense, staff should consult with their Division Manager or Director to ensure that they remain within their approved budget or, if additional measures beyond those within budget are required, that they are promptly considered and a compliant decision made. Upon having the applicable information, the Division Director or Manager and Fair Housing Manager will determine:

(A) If the proposed Reasonable Accommodation is covered under Section 504 and/or the Fair Housing Act, or any other federal or state law; and

(B) Whether to recommend to the Executive Director approval, an alternative Reasonable Accommodation, or denial.

(4) The request and recommendation are then sent to the Executive Director or their designee, resulting in one of the following steps:

(A) The Executive Director determines Board action is not necessary and approves the request;

(B) The Executive Director proposes an alternative Reasonable Accommodation to the Requestor;

(C) The Executive Director determines Board action is necessary and presents the request and any proposed alternative Reasonable Accommodation at an ensuing Board meeting. The Executive Director can choose to include a recommendation for or against the request;

(D) The Executive Director refers the request to the Department's Dispute Resolution Coordinator for an Alternative Dispute Resolution procedure as outlined in 10 TAC §1.17; or

(E) The Executive Director denies the request. In the case of a denial, the Requestor can ask that their request be placed on the agenda for the next available Board meeting.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802306
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.2

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.2, Department Complaint System. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.2. Department Complaint System.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802301
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.2

The Texas Department of Housing and Community Affairs (the "Department") proposes new Chapter 1, Subchapter A, §1.2, Department Complaint System. The purpose of the proposed new

section is to make changes that include: bringing the rule into greater conformity with the statute, clarifying procedural steps and adding staff roles and systems now used in the handling of complaints, providing for the provision of complaint-related documents to the person making the complaint, and providing the statutory authority and purpose of the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a more accurate reflection of the process and improved clarity. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have already been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

§1.2. Department Complaint System to the Department.

(a) Purpose. The purpose of this section is to establish the procedures by which complaints are filed with the Department and how the Department handles those complaints under Department jurisdiction in compliance with Tex. Gov't Code §2306.066, Tex. Gov't Code, Chapter 2105, Subchapter C, and 24 CFR §91.115(h), as applicable.

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

(1) Complaint--A complaint submitted to the Department in writing (via mailed letter, fax, email, or submitted online through the Department website) from a person that believes the Department has the authority to resolve the issue. This excludes consumer complaints relating to manufactured housing.

(2) Complaint Coordinator--Department employee designated by the Executive Director or his designee to monitor the Public Complaint System and coordinate activities related to complaints.

(3) Complaint Liaison--the Department employee(s) designated by each division to handle each division's complaint-related issues.

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

(5) Person--Any individual, other than an employee of the Department, and any partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) Public Complaint System--Department-created system used to track and process complaints received by the Department.

(c) Procedures. A person who has a Complaint may submit such Complaint to the Department for submission to a Complaint Coordinator. If an accommodation because of a disability is needed in relation to a Complaint, the Person interested in filing the Complaint should refer to 10 TAC §1.1, Reasonable Accommodation Requests; if assistance is needed for non-English speaking persons, the Person interested in filing the Complaint should access the Department's Language Assistance webpage (https://www.tdhca.state.tx.us/lap.htm).

(1) A Complaint Coordinator shall enter the complaint in the Public Complaint System, review and process the complaint, and forward the complaint to the appropriate Complaint Liaison.

(2) A Complaint Liaison shall investigate and resolve or close the Complaint. A Complaint Liaison shall enter summaries of contact with the complainant and actions leading to complaint resolution in the Public Complaint System.

(3) The Complaint Coordinator will submit periodic summary reports or analysis to the Executive Director or designee.

(4) The Department shall provide to the Person filing the Complaint, and to each Person who is a subject of the Complaint, a copy of this rule, which serves as the Department's policy and procedures relating to complaint investigation and resolution.

(5) The Department shall either notify the complainant of the resolution of the Complaint within 15 business days after the date the Complaint was received by the Department, or notify the complainant, within such period, of the date the complainant can expect a response to the Complaint.

(6) The Department shall notify the complainant of the status of the Complaint at least quarterly and until the final disposition of the Complaint.

(7) An information file about each complaint shall be maintained. The file must include:

(A) the Complaint number;

(B) the name of the person who filed the Complaint;

(C) the date the Complaint was received by the Department;

(D) the subject matter of the Complaint;

(E) the name of each Person contacted in relation to the Complaint;

(F) a summary of the results of the review or investigation of the Complaint; and

(G) an explanation of the reason the file was closed, if the Department closed the file without taking action other than to investigate the Complaint.

(8) A Complaint may be withdrawn by the complainant at any time.

(9) A complainant may request and receive from the Department copies of any documentation or records collected by the Department with regard to the complaint subject to the Texas Public Information Act.

(10) Adherence to these procedures is not required by the Department if another procedure is required by law, or if the following of a procedure above would jeopardize an undercover investigation.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802307
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.4

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.4, Protest Procedures for Contractors. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.4. Protest Procedures for Contractors.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802302
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.4

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.4, Protest Procedures for Contractors. The purpose of the proposed new section is to update the rule to reflect the most current Texas Comptroller of Public Account's (the "Comptroller") rules relating to procurement, found at 34 TAC Chapter 20, Subchapter F, Division 3, and provide improved organization and clarity in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not

have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with Comptroller rules and increased clarity and organization. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

§1.4. Protest Procedures for Contractors.

(a) Purpose. The purpose of this rule provides for the Department's compliance with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures.

(b) 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 Governing Board of the Department.

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

(3) Interested Parties--All vendors who have submitted bids or proposals for the contract involved. A list of interested parties is available upon request from the Department.

(4) Protest--A written objection submitted to the Department by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a procurement contract by the Department.

(c) These procedures are for Department procurements only. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a solicitation, evaluation, or award may formally protest to the Department's Purchasing Officer.

(d) To be considered timely, the Protest must be filed in accordance with the requirements of 34 TAC §20.535(b).

(e) To be considered complete, the Protest must be in writing, signed by an authorized representative, notarized, and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the Person submitting the Protest alleges to have been violated;

(2) a specific description of each act made by the Department that the Person submitting the Protest alleges to have been violated specified in the statutory or regulatory provision(s) identified in paragraph (1) of this Subsection;

(3) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the Protest has been timely filed;

(B) a description of the adverse impact to the Department or the state; and

(C) a description of the resulting adverse impact to the protesting vendor;

(4) a statement of the argument and authorities that the Person submitting the Protest offers in support of the Protest;

(5) an explanation of the subsequent action the Person submitting the Protest is requesting; and

(6) except for a Protest that concerns the solicitation documents or actions associated with the publication of solicitation documents, a statement confirming that copies of the Protest have been mailed or delivered to other identifiable Interested Parties.

(f) The Purchasing Officer shall have the initial authority to settle and resolve the Dispute concerning the solicitation or award of a contract. The Purchasing Officer may dismiss the Protest if it is not timely filed or does not meet the requirements of this section. The Purchasing Officer may solicit written responses to the Protest from other Interested Parties.

(g) If the Protest is not resolved by mutual agreement, the Purchasing Officer will provide a written recommendation to the Department's Executive Director.

(h) The Executive Director shall issue a final written determination on the Protest within 15 calendar days after receipt of the Purchasing Officer's recommendation in accordance with the requirements of 34 TAC §20.537(c).

(i) In the alternative, the Executive Director may, in his or her discretion, refer the matter to the Department's Governing Board for

their consideration at a regularly scheduled meeting. The decision of the Board shall be final.

(j) A protesting party may appeal the determination of the Executive Director under subsection (g) of this section to the Department's Governing Board. An appeal of the Executive Director's determination must be in writing and received by the Purchasing Officer not later than 10 calendar days after the date the Executive Director sent written notice of their determination. The scope of the appeal shall be limited to review of the Executive Director's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(1) The appeal will be presented for consideration at the next regularly scheduled meeting of the Governing Board. The decision of the Governing Board shall be final.

(2) An appeal that is not filed timely shall not be considered unless good cause for delay is shown in writing relating to issues that are significant to agency procurement practices or procedures, or the Department's General Counsel makes such a determination.

(k) All documents collected by the Department as part of a solicitation, evaluation, and/or award of a contract shall be retained with the procurement file according to Department's Records Retention Schedule.

(l) The Department reserves all of its rights under 34 TAC §20.536. The Department may award a solicitation or award without delay, in spite of a timely filed Protest, to protect the best interests of the state.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802308
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.6

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.6, Historically Underutilized Businesses. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.6. Historically Underutilized Businesses.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802303
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.6

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.6, Historically Underutilized Businesses. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code, §2161.003; to update the rule to provide consistency with the most current Texas Comptroller of Public Account's (the "Comptroller") rules relating to Historically Underutilized Businesses ("HUBs"), found at 34 TAC Chapter 20, Subchapter D,

Division 1, §§20.281 to 20.298; and to make minor edits for readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with Comptroller rules and increased clarity and organization. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

§1.6. Historically Underutilized Businesses.

It is the policy of the Department to encourage the use of Historically Underutilized Businesses ("HUB") in the Department"s procurement processes. The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the 2009 State of Texas Disparity Study. As required by Tex. Gov't Code §2161.003, the Department adopts the Texas Comptroller of Public Accounts ("Comptroller") HUB Program rules at 34 TAC §§20.281 - 20.298 (relating to Historically Underutilized Business Program, and as may be amended by the Comptroller so far as the amendments are implementing Tex. Gov't Code §2161.003), which describe the minimum steps and requirements to be undertaken by the Comptroller and state agencies to fulfill the state's HUB policy, and attain aspirational goals identified in the Texas Disparity Study.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802309
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.9

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.9, Texas Public Information Act ("TPIA") Training for Department Employees. After review of this rule in compliance with Tex. Gov't Code, §2001.039, the Department has assessed this rule and determined that there is no longer a need for this rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, as it is no longer necessary.

7. The proposed repeal will decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be the elimination of unnecessary regulations. There will not

be any economic cost to any individuals required to comply with the repealed section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.9. Texas Public Information Act Training for Department Employees.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802304
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.15

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter A, §1.15, Integrated Housing Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be an updated and more clear regulation. There will not be any economic cost to any individuals required to comply with the repealed section because additional requirements are not added through this repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed section affects no other code, article, or statute.

§1.15. Integrated Housing Rule.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802305
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.15

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter A, §1.15, Integrated Housing Rule. The purpose of the proposed new rule is to make changes that include: removing definitions now provided elsewhere in rule, updating the definitions for ˜Household with Disabilities" and ˜Integrated Housing", improving readability, removing previous exceptions to the rule for elderly and special needs populations, clarifying that marketing only to Households with Disabilities is not permitted, revising the integrated housing cap for large properties from 18 to 25, and revising the waiver language.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not

have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time JULY 11, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.15. Integrated Housing Rule.

(a) Purpose. It is the purpose of this section to provide a standard by which Developments funded by the Department offer an integrated housing opportunity for Households with Disabilities. This rule is authorized by Tex. Gov't Code, §2306.111(g) that promotes projects that provide integrated affordable housing.

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

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the funded or awarded Development, or assigned by federal or state law.

(2) Integrated Housing--Living arrangements typical of the general population. Integration is achieved when Households with Disabilities have the option to choose housing units that are located among units that are not reserved or set aside for Households with Disabilities. Integrated Housing is distinctly different from assisted living facilities/arrangements.

(3) Households with Disabilities--A Household composed of one or more persons, at least one of whom is an individual who is determined to have a physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or disability as defined by other applicable federal or state law.

(c) Applicability. This rule applies to:

(1) All Multifamily Developments subject to Chapter 10 of this Title, Uniform Multifamily Rules, with the exclusion of Transitional Housing Developments;

(2) Single Family Developments subject to Chapter 23, Subchapter G, of this Title, relating to HOME Program Single Family Developments, or done with Neighborhood Stabilization Program funds, with the exclusion of Scattered-site developments, meaning one to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site; and

(3) Only the restrictions or set asides placed on Units through a Contract, LURA, or financing source that limits occupancy to Persons with Disabilities. This rule does not prohibit a Development from having a higher percentage of actual occupants who are Persons with Disabilities.

(4) Previously awarded Multifamily Developments that would no longer be compliant with this rule are not considered to be in violation of the percentages described in subsection (d)(2) or subsection (d)(3) of this rule if the award is made prior to September 1, 2018, and the restrictions or set asides were already on the Development or proposed in the Application for the Development.

(d) Integrated Housing Standard. Units exclusively set aside or containing a preference for Households with Disabilities must be dispersed throughout a Development.

(1) A Development may not market or restrict occupancy solely to Households with Disabilities unless required by a federal funding source.

(2) Developments with 50 or more Units shall not exclusively set aside more than 25 percent of the total Units in the Development for Households with Disabilities.

(3) Developments with fewer than 50 Units shall not exclusively set aside more than 36 percent of the Units in the Development for Households with Disabilities.

(e) Board Waiver. The Board may waive the requirements of this rule if the Board can affirm that the waiver of the rule is necessary to serve a population or subpopulation that would not be adequately served without the waiver, and that the Development, even with the waiver, does not substantially deviate from the principle of Integrated Housing.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802310
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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CHAPTER 2. ENFORCEMENT
SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLIANCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §2.203

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 2, Subchapter B, §2.203, concerning Termination and Reduction of Funding for CSBG Eligible Entities. The proposed repeal is to eliminate the rule which warrants revisions while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation, however that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal are in effect, the public benefit anticipated as a result of the repealed section will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 9, 2018.

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

§2.203. Termination and Reduction of Funding for CSBG Eligible Entities.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802290
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §2.203

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 2, Subchapter B, §2.203 Termination and Reduction of Funding for CSBG Eligible Entities. The purpose of the proposed new section is to provide greater clarity in the process described in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved clarity in the process described in the rule. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed rule will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 9, 2018.

STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

§2.203. Termination and Reduction of Funding for CSBG Eligible Entities.

(a) This section describes the Department's process for implementing HHS Information Memorandum 116 (Corrective Action, Termination, or Reduction of Funding) ("IM 116") and 42 U.S.C. 9915.

(b) Deficiencies may be identified through failure to resolve issues identified in an onsite monitoring review, a review of the Subrecipient's Single Audit, a review prompted by a complaint, through the Department's procedures for reviewing performance and expenditure reports, or in any other review under 42 U.S.C. §9914(a)(1) - (4).

(c) If a Deficiency is identified, the Department will review the training and technical assistance that has been provided to the Eligible Entity and determine if further training and technical assistance is warranted. If so, concurrent with the notification of the Deficiency, the Eligible Entity will be offered additional training and technical assistance that specifically focuses on the Deficiencies. After training and technical assistance has been delivered, the Eligible Entity will be provided the opportunity to submit corrective action or a plan for correction.

(d) If an entity does not respond, does not resolve the Deficiency, or does not propose a reasonable corrective action plan, the uncorrected Deficiency (or Deficiencies) will be considered a final decision in a review pursuant to the CSBG Act and cause for proceedings to terminate Eligible Entity status or reduce funding in accordance with IM 116 and 42 U.S.C. §9908(b)(8) and §9915; such a determination will be issued in a final determination letter from the Department.

(e) If the Department determines that the development and implementation of a QIP is an appropriate requirement and/or that additional training and technical assistance are needed, that requirement will be stated in the final determination letter. The Eligible Entity will be provided 20 calendar days to submit an acceptable QIP compliant with §2.204 of this subchapter, indicating that steps are under way and identifying dates for correction. Within 30 calendar days from the date it receives the proposed QIP, the Department will review the QIP and either approve it or specify the reasons it cannot be approved.

(f) The CSBG Act requires that a QIP be implemented not later than 60 calendar days following the notification in the final determination letter. That requirement precludes a process of extended review and feedback and iterative QIP submissions (unless the QIP has been submitted sufficiently early to allow time for such Department review); a QIP that cannot be approved within the timeframe that allows for the implementation not later than the 60 calendar day deadline will generally serve to trigger the commencement of formal legal proceedings to terminate Eligible Entity status.

(g) If it is determined and/or documented that training and technical assistance is not appropriate, that a QIP is not appropriate, the QIP has not been approved, or the processes described in subsection (d) of this section have failed to resolve the Deficiency, the Department will contact all members of the Subrecipient's Board, and request that the Department's Governing Board at the next scheduled meeting authorize staff to pursue a hearing with the State Office of Administrative Hearings ("SOAH"). If approved by the Department's Governing Board, the Department will arrange and set a date for a hearing with SOAH. If the Eligible Entity does not respond or appear for the SOAH hearing, the consideration of termination of the Eligible Entity's status will be heard at the next regularly scheduled meeting of the Department's Governing Board. An entity receiving notice of the initiation of a contested case before SOAH is reminded that they will need to read and comply with SOAH's requirements in the way they handle and respond to the matter.

(h) SOAH will issue a proposal for decision to the TDHCA Governing Board recommending whether there is cause, as defined by the CSBG Act, 42 U.S.C. §9908(c), to terminate or reduce funding to the Subrecipient. The TDHCA Governing Board will be provided the proposal for decision and it will be considered as part of any final order by the Board in the matter.

(i) If the TDHCA Governing Board determines that there is cause to terminate or reduce funding, pursuant to 42 U.S.C. §9915, the Department will notify the Subrecipient that it has the right under 42 U.S.C. §9915 to seek review of the decision by the HHS. If HHS does not overturn the decision, or if the Subrecipient does not seek HHS review, the entity's status as an Eligible Entity under the CSBG Act, and all active CSBG Contracts will be terminated on the 90th calendar day after the Board decision.

(j) Any right or remedy given to the Department by this Chapter does not preclude the existence of any other right or remedy, nor shall any action or lack of action by the Department in the exercise of any right or remedy be deemed a waiver of any other right or remedy.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802288
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §2.204

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of Chapter 2, Subchapter B, §2.204, Contents of a Quality Improvement Plan. The proposed repeal is to eliminate the rule which warrants revisions while adopting a new updated rule under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the repealed section is in effect, enforcing or administering the repealed section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeal would be in effect:

1. The proposed repeal will not create or eliminate a government program;

2. The proposed repeal will not require a change in the number of employees of the Department;

3. The proposed repeal will not require additional future legislative appropriations;

4. The proposed repeal will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed repeal will not create a new regulation;

6. The proposed action will repeal an existing regulation; however, that regulation is being simultaneously recommended for a new rule;

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed repeal will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, July 9, 2018.

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs.

Except as described herein the proposed repeal affects no other code, article, or statute.

§2.204. Contents of a Quality Improvement Plan.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802289
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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10 TAC §2.204

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 2, Subchapter B, §2.204, Contents of a Quality Improvement Plan. The purpose of the proposed new section is to correct several incorrect citations in the rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rule does not create or eliminate a government program;

2. The proposed rule will not require a change in the number of employees of the Department;

3. The proposed rule will not require additional future legislative appropriations;

4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;

6. The proposed rule will not expand an existing regulation;

7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved clarity in the process described in the rule. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed rule will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 9, 2018.

STATUTORY AUTHORITY. The proposed rule is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rule affects no other code, article, or statute.

§2.204. Contents of a Quality Improvement Plan.

If a QIP is required of a Subrecipient under §2.203(e) of this Subchapter, it must be developed compliant with the guidance in this section. While each QIP developed by a Subrecipient is unique and must be responsive to the specific Deficiencies identified, all of the items in paragraphs (1) through (3) of this section, at a minimum, must be addressed.

(1) A QIP must initially provide a clear and explicit acknowledgement of each of the Deficiencies that have prompted the need for such a plan, and must be described in sufficient detail to affirm that the Subrecipient's board and management have a solid grasp of the needed improvement.

(2) Although commencement of the implementation of a QIP is specified in statute (42 USC §9915(a)(4)) the timeline for completion is important. The QIP must set forth an aggressive but achievable timeline that plans for implementation of the planned remedies to be actively underway not later than the sixtieth day after the day on which the Department notified the Subrecipient of a final determination consistent with §2.203(c) of this Subchapter. The timeline should take into account the possible impact on achievement of benchmarks, plans, and other objectives. As a general rule the Subrecipient should not expect to receive an extension of any timeframes described herein.

(3) The QIP must be specific. A general statement, such as "the Subrecipient will ensure it has a compliant tripartite board" or "the Subrecipient will obtain a compliant Single Audit" will not suffice. Many such matters involve multiple steps from analysis and planning at the management level, to board presentation and approval, to procurement, to contracting, to execution under the Contract, often with follow-on requirements. If any of the steps will also require expenditure of funds, it may also be necessary to review and update the budget and possibly other matters, such as plans. Specificity must include at a minimum addressing the following questions:

(A) Whom within the Subrecipient's staff will do what specific steps/tasks, when will they do it, and what resources will they need?

(B) If staff is to be redirected or released from existing duties, how will those duties be covered?

(C) How will the agency ensure the Deficiency does not reoccur?

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802291

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 6, Community Affairs Programs: Chapter A, §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; Subchapter B, §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; Subchapter C, §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; Subchapter D, §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units, and §6.415 Health and Safety and Unit Deferral. The proposed repeal is to eliminate portions of the rule that warrant revisions while adopting new updated rules under separate action.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that for each year of the first five years the repealed sections are in effect, enforcing or administering the repealed sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the repeals would be in effect:

The proposed repeals will not create or eliminate a government program;

The proposed repeals will not require a change in the number of employees of the Department;

The proposed repeals will not require additional future legislative appropriations;

The proposed repeals will result in neither an increase nor a decrease in fees paid to the Department;

The proposed repeals will not create a new regulation;

The proposed action will repeal existing regulations, however those regulations are being simultaneously recommended for new rules;

The proposed repeals will not increase nor decrease the number of individuals subject to the rule's applicability; and

The proposed repeals will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repealed sections will be clarity of program requirements. There will be no economic cost to any individuals required to comply with the repeals.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed repeal will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us.

ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 9, 2018.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§6.1 - 6.3, 6.7, 6.8

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

§6.1. Purpose and Goals.

§6.2. Definitions.

§6.3. Subrecipient Contract.

§6.7. Subrecipient Reporting Requirements.

§6.8. Applicant/Customer Denials and Appeal Rights.

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §§6.205 - 6.207, 6.213, 6.214

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

§6.205. Limitations on Use of Funds.

§6.206. CSBG Needs Assessment, Community Action Plan, and Strategic Plan.

§6.207. Subrecipient Requirements.

§6.213. Board Responsibility.

§6.214. Board Meeting Requirements.

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

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SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§6.301, 6.304, 6.307, 6.309, 6.312

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

§6.301. Background and Definitions.

§6.304. Deobligation and Reobligation of CEAP Funds.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

§6.309. Types of Assistance and Benefit Levels.

§6.312. Payments to Subcontractors and Vendors.

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

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SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §§6.403, 6.405 - 6.407, 6.412, 6.414, 6.415

STATUTORY AUTHORITY. The proposed repeal is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed repeal affects no other code, article, or statute.

§6.403. Definitions.

§6.405. Deobligation and Reobligation of Awarded Funds.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

§6.407. Program Requirements.

§6.412. Mold-Like Substances.

§6.414. Eligibility for Multifamily Dwelling Units.

§6.415. Health and Safety and Unit Deferral.

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

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CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 6, Community Affairs Programs: Chapter A, §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; Subchapter B, §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; Subchapter C, §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; Subchapter D, §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units, and §6.415 Health and Safety and Unit Deferral. The purpose of the proposed new sections is to improve clarity, to remedy discrepancies between rules, to correct identified areas of concern, and to provide changes needed to address findings identified by the U.S. Department of Health and Human Services ("HHS").

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the rule would be in effect:

1. The proposed rules do not create or eliminate a government program;

2. The proposed rules will not require a change in the number of employees of the Department;

3. The proposed rules will not require additional future legislative appropriations;

4. The proposed rules will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed rules will not create new regulations, except that they are replacing rules being repealed simultaneously to provide for the updating and improved clarity of those rules;

6. The proposed rules will not expand an existing regulation;

7. The proposed rules will not increase the number of individuals subject to the rule's applicability; and

8. The proposed rules will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity in the processes described in the rule, resolution of discrepancies between rules, correction to identified areas of concern, and changes needed to address findings identified by HHS. There will not be any economic cost to any individuals required to comply with the new sections, because the processes described by the rules have been in place through the rules found at the sections being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period for the proposed rules will be from June 8, 2018, to July 9, 2018. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 9, 2018.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§6.1 - 6.3, 6.7, 6.8

STATUTORY AUTHORITY. The proposed rules are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs.

Except as described herein the proposed rules affect no other code, article, or statute.

§6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this Title.

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates

ensure state and federal resources are expended in an efficient and effective manner.

(d) In instances of a disaster, the Department may pursue waivers or explore flexibilities as addressed in CSBG IM -154 (and any other subsequent guidance or similar guidance for LIHEAP or DOE WAP) through HHS or DOE within the CA programs in order to serve low income Texans.

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility--A method where a Subrecipient must deem a Household to be eligible for benefits if that Household includes at least one member that receives:

(A) SSI payments from the Social Security Administration; or

(B) Means Tested Veterans Program payments. See paragraph (30) of this section.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency but if not changed will or may result in Findings, Deficiencies and/or disallowed costs.

(10) Contract--The executed written agreement between the Department and a Subrecipient performing an activity related to a program that describes performance requirements and responsibilities assigned by the document, for which the first day of the Contract term is the point at which program funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(11) Contracted Funds--The gross amount of funds Obligated by the Department to a Subrecipient as reflected in a Contract.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(13) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(14) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Departments determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(15) Deobligate/Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-discretionary funds.

(16) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.

(17) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(19) Elderly Person--

(A) for CSBG, a person who is 55 years of age or older; and

(B) for CEAP and WAP, a person who is 60 years of age or older.

(20) Emergency--defined as:

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary of HHS;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(21) Expenditure--Funds that have been accrued or remitted for purposes of the award, or in the case of CEAP, funds that have been pledged.

(22) Families with Young Children--A Household that includes a Child age five or younger. For LIHEAP WAP only, a Family with Young Children also includes a Household that has a pregnant woman.

(23) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organizations ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--A Household that is billed more than $1000 annually for related fuel costs for heating and cooling their Dwelling Unit.

(26) Household--Any individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For CSBG/LIHEAP these persons customarily purchase residential energy in common or make undesignated payments for energy. In CSBG/LIHEAP a live-in aide, or a Renter with a separate lease that includes a separate bill for utilities would not be considered a Household member.

(27) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(28) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the HHS Poverty Income guidelines.

(29) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(30) Means Tested Veterans Program--A program whereby applicants receive payments under §§415, 521, 541, or 542 of title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(31) Mixed Status Household--A Household that contains one or more members that are U.S. Citizens, U.S. Nationals, or Qualified Aliens, and one or more members that are Unqualified Aliens.

(32) Obligation--Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

(33) Observation--A notable policy, practice or procedure observed though the course of monitoring.

(34) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(35) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(36) Outreach--The method that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(37) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(38) Persons with Disabilities--Any individual who is:

(A) an individual described in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. §15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(39) Population Density--The number of persons residing within a given geographic area of the state.

(40) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(41) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

(42) Production Schedule--The estimated monthly and quarterly performance targets and expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(43) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP and July 1 through June 30 of each calendar year for DOE WAP.

(44) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(45) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b).

(46) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.

(47) Reobligation--The reallocation of Deobligated funds to other Subrecipients.

(48) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

(49) State--The State of Texas or the Department, as indicated by context.

(50) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(51) Subgrant--An award of financial assistance in the form of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(52) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(53) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).

(54) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(55) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").

(56) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(57) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(58) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects Subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(59) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(60) Unqualified Alien--A person that is not a U.S. Citizen, U.S. National, or a Qualified Alien.

(61) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(62) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(63) Weatherization Assistance Program ("WAP")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.3. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs contract system.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient and will not be granted if any of the following circumstances exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) if the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403, relating to Single Audit Requirements, in Chapter 1 of this Title;

(C) if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(D) for amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue; or

(E) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection or other applicable reason will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

§6.7. Subrecipient Reporting Requirements.

(a) Subrecipient must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested. It is the responsibility of the Subrecipient to upload information into the Department's designated database.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.

(d) If the Department has provided funds to a Subrecipient in excess of the amount of reported expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced $50,000. In February, if the Subrecipient reports $10,000 in Expenditures and an anticipated need for $30,000, no funds will be released.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

(h) A Subrecipient may refer a contractor to the Department for debarment consistent with §2.401, regarding Debarment from Participation in Programs Administered by the Department, of this Title.

§6.8. Potential Applicant/Applicant/Customer Denials and Appeal Rights.

(a) Subrecipient shall establish a written procedure for the handling of denials of service when the denial involves an individual inquiring or applying for services/assistance whom is communicating or behaving in a threatening or abusive manner.

(b) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (1) - (8) of this subsection shall be included:

(1) Subrecipient shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) calendar days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipient shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turnaround).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

(c) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) calendar days of notification of an adverse decision.

(d) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(e) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, relating to Contested Case Hearing Procedures, of this Title.

(f) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

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

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §§6.205 - 6.207, 6.213, 6.214

STATUTORY AUTHORITY. The proposed rules are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rules affect no other code, article, or statute.

§6.205. Limitations on Use of Funds.

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of funds for partisan or nonpartisan political activity; any political activity associated with a candidate, contending faction, or group in an election for public or party office; transportation to the polls or similar assistance with an election; or voter registration activity, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten calendar days of receipt.

§6.206. CSBG Community Assessment, Community Action Plan, and Strategic Plan.

(a) In accordance with the CSBG Act each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three (3) years each Eligible Entity shall complete a Community Assessment (may also be called "Community Needs Assessment" or "CNA"), upon which the annual Community Action Plan will be based. Guidance on the content and requirements of the Community Assessment will be released by the Department. Information related to the Community Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Community Assessment will require, among other things, that the top five needs of the service area are identified.

(d) Services to Poverty Population. Eligible Entities administering services to customers in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. Eligible Entities with a service area of a single county shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(e) The Community Action Plan shall be derived from the Community Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a performance statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The Community Action Plan must take into consideration the outcomes expected by previous Community Action Plan(s). If past outcomes were not achieved as reported in the CA contract system, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules or in Department actions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction.

(h) If circumstances warrant amendments to the Community Assessment or the CAP, a Subrecipient must provide a written request to the Department identifying the specific requested change(s) to the document with a justification for each change. The Department will approve or deny amendment requests in writing.

(i) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must submit to the Department a certification from its board that a public hearing was conducted on the proposed use of funds.

(j) Every five (5) years each Eligible Entity shall complete a strategic plan, with which the annual Community Action Plan should be consistent. Information related to the strategic plan shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract.

(k) Each CSBG Subrecipient must develop a performance statement which identifies the services, programs, and activities to be administered by that organization.

§6.207. Subrecipient Requirements.

(a) Eligible Entities shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this Subchapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipient must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) Subrecipients are required to provide integrated case management services. Subrecipients are required to identify and set goals for households they serve through the case management process. Subrecipients are required to evaluate and assess the effect their case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of case management services provided.

(3) Eligible Entities are each assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these transitioning out of poverty "TOP" households. The case management services must include the components described in subparagraphs (A) - (L) of this paragraph. Subrecipients must also provide case management clients with a Customer Satisfaction Survey, subparagraph (M), for the client to complete anonymously. And, at least annually, Subrecipients must evaluate the effectiveness of their case management services, subparagraph (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up - A system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) A system to document and notify customers of termination of case management services;

(M) Customer Satisfaction Survey; and

(N) Evaluation System. On an annual basis, Eligible Entities should determine the effectiveness of their case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS in Information Memorandum #138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards may result in HHS Information Memorandum #116 proceedings as described in Chapter 2 of this Title.

§6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the performance statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; and

(F) Updated information on community conditions that affect the programs and services of the organization.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) assess and respond to the causes and conditions of poverty in their community;

(2) achieve anticipated family and community outcomes; and

(3) remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

(d) Residence Requirement. Board members must follow any residency requirements outlined in 42 USC §9910, or federal regulations made pursuant to this section.

(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:

(1) Cost Reimbursement;

(2) withholding of funds;

(3) Contract suspension; or

(4) termination of funding.

§6.214. Board Meeting Requirements.

(a) A Board of an Eligible Entity must meet and have a quorum at least once per calendar quarter, and at a minimum five (5) times per year and, must give each Board member a notice of meeting five (5) calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body and of a nonprofit corporation that is eligible to receive funds under the federal CSBG program and that is authorized by the state to serve a geographic area of the state. All Eligible Entities must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

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

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Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§6.301, 6.304, 6.307, 6.309, 6.312

STATUTORY AUTHORITY. The proposed rules are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rules affect no other code, article, or statute.

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme weather conditions will exist when the temperature has been at least 2 degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), when the temperature is at least 2 degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme weather conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at http://www.ncdc.noaa.gov/cdo-web/datatools/normals, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipient must maintain documentation of local temperatures and reflect their standard for extreme weather conditions in its Service Delivery Plan.

(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Households, particularly Vulnerable Population Households.

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household would be adversely affected without the Subrecipient's utility assistance, because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not be requested about the medical condition of the applicant/customer but must state that such a device is required in the Dwelling Unit to sustain life.

(4) Low on Fuel--A reference to propane tanks which are below 20% supply (according to customer).

(5) Vendor Refund--A sum of money refunded by a utility company or supplier due to a credit on the account or due to a deposit. See §6.312 of this Subchapter for more information.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may determine to Deobligate funds from all budget categories from Subrecipients whose combined Expenditures and customer Obligations are less than 45% as of the May 15 report, unless an exception is approved by the Department in writing for extenuating circumstances. Subrecipients that request training and/or technical assistance may avoid deobligation at this phase if they request such assistance on or before the filing of the May 15 report. Once such assistance has been delivered, as determined by the Department, the Subrecipient must submit a clear specific plan for improving utility obligations and that plan must be approved by the Department in writing.

(b) The Department may deobligate funds from all budget categories from a Subrecipient whose combined Expenditures and customer Obligations are less than 70% as of the July 15 report, unless an exception is approved by the Department in writing for extenuating circumstances.

(c) The cumulative amount of Deobligated funds will be allocated proportionally by formula amongst all Subrecipients that did not have any funds Deobligated.

(d) A Subrecipient which has had funds Deobligated under subsection (a) or (b) of this section that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year CEAP allocation. A Subrecipient which has had funds deobligated under subsection (a) or (b) of this section that fail to fully expend the reduced amount of its Contract will automatically have the following Program Year CEAP allocation Deobligated by the lesser of 24.99%, or the proportional amount that had been Deobligated in the prior year.

(e) The cumulative balance of the funds made available through subsection (d) of this section will be allocated proportionally by formula to the Subrecipients not having funds reduced under that subsection.

(f) In no event will involuntary Deobligations that occur through any of the clauses of this section exceed 24.99% of the Subrecipient's Program Year CEAP Contracted Funds, without a hearing as required by Tex. Gov't Code, Chapter 2105.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) A complete application is required for all Households. Subrecipient shall determine customer income using the definition of income and process described in §6.4 (relating to income) of this Chapter. Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(c) Social security numbers are not required for applicants for CEAP.

(d) Subrecipient must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(e) A Dwelling Unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if:

(1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter;

(2) the members of the separate structures that share a meter submit one application as one Household; and

(3) all persons and applicable income from each structure are counted when determining eligibility.

(f) United States Citizen, United States National, or Qualified Alien. Except for items described in 10 TAC §6.310(e)(4) and (6), Unqualified Aliens are not eligible to receive CEAP benefits. Mixed Status Households shall not be denied CEAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Subrecipient other than a Public Organization may utilize a method of its choosing, and may opt to use the Systematic Alien Verification for Entitlements ("SAVE") program, but is not required to do so. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status using SAVE.

§6.309. Types of Assistance and Benefit Levels.

(a) Allowable CEAP expenditures include customer education, utility payment assistance; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed $5,400 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, whether a Household has one or more Unqualified Aliens for which calculation adjustments must be made as described in paragraphs (1) and (2) of this subsection, and the availability of funds.

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(d) For purposes of determining Categorical Eligibility or Vulnerable Populations (i.e. priority status), the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with that Categorical Eligibility or Vulnerable Population status are Unqualified Aliens. For purposes of reporting, all individuals in the Households should be reported.

(e) Benefit determinations for the Utility Payment Assistance Component and the Household Crisis Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed $1,200 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed $1,100 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed $1,000 per Component; and

(f) Service and Repair of existing heating and cooling units: Households may receive up to $3,000 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310, Relating to Household Crisis Component.

(g) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units not to exceed $3,000 for Households that include a Vulnerable Population member, when the Household does not have an operable or non-existing heating or cooling system, regardless of weather conditions.

(h) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (11) of this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipient may make utility payments on behalf of Households based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, as long as the cost does not exceed the maximum annual benefit.

(C) Households that do not contain a Vulnerable Population member can receive benefits to cover up to the six highest remaining bills within the Program Year as long as the cost does not exceed the maximum annual benefit.

(2) Payment to vendors--only one energy bill payment per month;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water, waste water and solid waste charges are not an allowable LIHEAP expense even in cases where those charges are an inseparable part of a utility bill. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill or utilize other funds to pay for the water related charges;

(5) Energy bills already paid may not be reimbursed by the program;

(6) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipient shall not pay such security deposits that the energy provider will eventually return to the customer;

(8) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(9) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent;

(10) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings; and

(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (e.g., vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

§6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual Vendor Agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D, of this Title.

(c) Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the Vendor Payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to Vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

(f) A Vendor Refund is program income and must be reimbursed to the Subrecipient, and not the customer.

(g) When a Vendor Refund is issued, Subrecipient shall determine which TDHCA Contract the payment(s) was charged to, the Household associated to the payment and if the Contract remains open.

(1) If the Contract remains open, Subrecipient must enter the amount into the Contract System in the appropriate budget line item into the adjustment column in the next monthly report, and make the appropriate note in the system. This will credit back the Vendor Refund for the Subrecipient to expend on eligible expenses.

(2) If the Contract is closed, Subrecipient must return the Vendor Refund(s) to the Department within ten calendar days of receipt. The payment must contain the Contract number and appropriate budget line item associated with the refund.

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

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Timothy K. Irvine
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SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §§6.403, 6.405 - 6.407, 6.412, 6.414, 6.415

STATUTORY AUTHORITY. The proposed rules are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which specifically authorizes the Department to administer community affairs programs. Except as described herein the proposed rules affect no other code, article, or statute.

§6.403. Definitions.

(a) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

(e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

(f) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

(g) Renter--A person who pays rent for the use of the Dwelling Unit.

(h) Reweatherization--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweatherization.

(i) Shelter--a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(j) Significant Energy Savings--A Savings to Investment Ratio (SIR) of 1.0 or greater.

(k) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

(l) Weatherization Assistance Program Policy Advisory Council ("WAP PAC")--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.

(m) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(n) Weatherization--A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§6.405. Deobligation and Reobligation of Awarded Funds.

(a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for Seobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.

(b) A written Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of the Subrecipient by the Department within seven (7) business days after the notice to the

Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 calendar days.

(c) Within fifteen (15) days of the date of the 'Notification of Possible Deobligation' referenced in subsection (b) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.

(d) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or Expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits or other assessments or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other Concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) Request to retain for the full Fund Award if Partial Deobligation was indicated;

(2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;

(3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their current Contract within 30 calendar days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department in writing;

(2) By the third program reporting deadline, Subrecipient must report at least one unit weatherized for each Weatherization contract;

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable (i.e., cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(n) A Subrecipient that has funds deobligated under this section but that fully expends the reduced amount of its Contract, will have access to the full amount of the following Program Year WAP allocation. A Subrecipient which has had funds Deobligated under this section that fails to fully expend the reduced amount of its Contract will automatically have its following Program Year WAP allocation Deobligated by the lesser of 24.99% or the proportional amount that had been Deobligated in the prior year.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipient shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipient shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this Subchapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this Chapter (relating to Income Determination).

(d) Social Security numbers are not required for applicants.

(e) U.S. Citizen, U.S. National or Qualified Alien. Unqualified Aliens are not eligible to receive WAP benefits. Mixed Status Households shall not be denied WAP assistance based solely on the presence of a non-qualified member, except if the member is the sole member of the Household. A Subrecipient other than a Public Organization may utilize an application method of its choosing, and may opt to use the Systematic Alien Verification for Entitlements ("SAVE") program, but is not required to do so. A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status using SAVE. Assistance shall be determined as follows:

(1) Count income for all Household members eighteen years of age and older, including Unqualified Aliens; and

(2) Adjust the Household size for determining eligibility and benefit assistance level to exclude all Unqualified Aliens.

(f) For purposes of determining Categorical Eligibility or Vulnerable Populations (e.g. priority status) the Household is not considered to satisfy the definition of having Categorical Eligibility or Vulnerable Population if the only individual(s) in the Household with Categorical Eligibility or Vulnerable Population status is an Unqualified Alien. For purposes of reporting, all individuals in the Household should be reported.

§6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipient must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit, through LIHEAP WAP funds using the priority list, or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the audit as a guide for installed measures. A Subrecipient combining DOE funds with LIHEAP WAP funds may not mix the use of the audit and the priority list.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the priority list as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this Subchapter prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

§6.412. Mold-like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of State Health Services or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. Subrecipient shall also inform the applicant in writing that they should contact the Texas Department of Licensing and Regulation, or successor agency, to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of State Health Services' guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, and that no guarantee is offered that the mold-like substance will be eliminated and that the mold-like substance may return. The auditor must obtain written approval from the applicant to proceed with the Weatherization work and maintain the documentation in the customer file

(d) Subrecipient shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

§6.414. Eligibility for Multifamily Dwelling Units.

(a) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low Income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(b) In order to weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating (e.g., boilers) and/or shared cooling plants (e.g., cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipient shall submit in writing to the Department a request

for approval along with evidence which clearly shows that an investment of funds would result in Significant Energy Savings because of upgrades to equipment, energy systems, common space, or the building shell. When necessary, the Department will seek approval from DOE. Approvals from the Department in writing must be received prior to the installation of any Weatherization measures in this type of structure.

(c) In order to weatherize Shelters, Subrecipient shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures.

(d) If roof repair is to be considered as part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15) and Appendix A-Standards for Weatherization Materials.

(e) WAP Subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Departments website.)

(1) Multifamily Pre-Project Checklist Form;

(2) Multifamily Post-Project Checklist Form;

(3) Permission to Perform an Assessment for Multifamily Project Form;

(4) Landlord Agreement Form;

(5) Landlord Financial Participation Form; and

(6) Significant Data Required in all Multifamily Projects.

(f) For DOE WAP, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by the HUD and included on a list published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification. A public housing, assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (a) of this section.

(g) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved, and finishing with Health and Safety measures.

§6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 15% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term. Health and Safety expenditures with LIHEAP WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term.

(b) Subrecipient shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipient must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings in its Standard Work Specifications.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

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

Filed with the Office of the Secretary of State on May 24, 2018.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1762

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CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.3

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC, Chapter 8, Project Rental Assistance Program Rule, §8.3, Participation as a Proposed Development. The purpose of the proposed amendments is to ensure consistency with federal guidelines and other Department rules, and provide clarity to program participants.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues for the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years the amendments would be in effect:

1. The proposed amendments do not create or eliminate a government program;

2. The proposed amendments will not require a change in the number of employees of the Department;

3. The proposed amendments will not require additional future legislative appropriations;

4. The proposed amendments will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendments will not create a new regulation;

6. The proposed amendments will not expand, will not limit, or will not repeal an existing regulation;

7. The proposed amendments will not increase or will not decrease the number of individuals subject to the rule's applicability; and

8. The proposed amendments will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be improved clarity and consistency in guidance to enhance the efficiency and effectiveness of the Section 811 Program. There will not be any economic cost to any individuals required to comply with the amended section. The amended section may add some potential existing units for program consideration; but, therefore, there is no cost impact because of this amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 11, 2018, to July 11, 2018, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935 or by email to the following address: brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time on July 11, 2018. A copy of the amended section will be available on the Department's website at http://www.tdhca.state.tx.us/public-comment.htm under Items Open for Public Comment during the public comment period.

STATUTORY AUTHORITY. The amendment is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amendment affects no other code, article or statute.

§8.3. Participation as a Proposed Development.

(a) To the extent that Applications under Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

(2) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

(A) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(B) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(C) Existing structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed 62 or up age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title [~~(such as housing for special needs)~~] are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is 25%.

[~~(1) 25% for Housing Developments with less than 50 Units, and~~]

[~~(2) 18% for Housing Developments with 50 or more Units or for Elderly Limitation Developments.~~]

(d) Section 811 PRA units must be dispersed throughout the Development.

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.407

The Public Utility Commission of Texas (commission) proposes new §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments. The addition of §26.407 reflects the development and implementation of a mechanism to determine the annualized Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) support for certain small incumbent local exchange companies (small ILEC). The proposed rule establishes criteria by which a small ILEC may request that the commission determine the amount of SRILEC USP support it receives, so that the support, combined with regulated revenues, provides the small ILEC an opportunity to earn a reasonable rate of return under this rule, as required by Senate Bill 586, 85th Legislative Session (Regular Session).

Liz Kayser, Director, Retail Markets and Licensing, has determined that for each year of the first five-year period the new rule will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the new rule.

Ms. Kayser has determined that for each year of the first five years the new section will be in effect, the anticipated public benefits will be the opportunity for certain small ILECs to be able to earn a reasonable rate of return, which will allow continued provision of local exchange service to customers in rural areas of the state. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to companies that are required to comply with the new rule as proposed.

Ms. Kayser has determined that for each year of the first five years the new section will be in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

There is no impact on local government as a result of enforcing or administering the amended rules as proposed. There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

Pursuant to Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. The agency has determined the following: (1) the proposed rule will not create or eliminate a government program; (2) implementation of the proposed rule will not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rule will not require an increase or decrease in fees paid to the agency; (5) the proposed rule will create a new regulation; (6) the proposed rule will expand, limit, or repeal an existing regulation; (7) the proposed rule will not increase the number of individuals subject to the proposed rule's applicability; and (8) the proposed rule will not positively or adversely affect this state's economy.

The commission staff will conduct a public hearing on this rulemaking, if requested, as required by the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received no later than 30 days after publication.

Initial comments on the new section should be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, not later than July 9, 2018. Reply comments may be submitted not later than July 20, 2018. Sixteen copies of initial comments and reply comments are required to be filed according to 16 Texas Administrative Code (TAC) §22.71(c). Comments must be organized in a manner consistent with the organization of the amended rule. All comments must refer to Project Number 47669.

This new section is proposed under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2017), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §56.032, which provides the commission with the authority to revise a small ILEC's monthly support to be made available from the SRILEC USP; and §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the PURA that is necessary and convenient to the exercise of that power and jurisdiction.

Cross reference to statute: PURA §§14.001, 14.002, and 56.032.

§26.407. Small and Rural Incumbent Local Exchange Company Universal Service Plan Support (SRILEC USP) Adjustments.

(a) Purpose. This section establishes criteria for a small incumbent local exchange company (small ILEC) to request adjustments to the monthly support the company receives in accordance with §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP)).

(b) Application.

(1) Small ILECs. This section applies to a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to a telecommunications provider other than a small ILEC that provides service in small ILEC study areas that have been designated as an ETP by the commission in accordance with §26.417 of this title.

(c) Definitions. The following words and terms, when used in this section, will have the following meaning, unless the context clearly indicates otherwise:

(1) Eligible telecommunications provider (ETP) -- A telecommunications provider designated by the commission in accordance with §26.417 of this title.

(2) Federal Communications Commission (FCC) Rate of Return -- The FCC's most recently prescribed rate of return as of the date of any determination, review, or adjustment under this section, to be no greater than 9.75 percent prior to July 1, 2021. If the FCC no longer prescribes such a rate of return, commission staff will initiate proceedings as necessary for the commission to determine or modify the FCC rate of return to be used for purposes of this section.

(3) Reasonable Rate of Return -- An intrastate rate of return within two percentage points above or three percentage points below the FCC rate of return.

(4) Small incumbent local exchange company (small ILEC) -- For purposes of this section, a small ILEC is a small provider as defined by PURA §56.032(a)(2).

(d) Notification to the commission that a small ILEC seeks to participate in this section. A small ILEC that is not an electing company under Chapters 58 or 59 may file a written notice to the commission to participate in this section to have the commission determine the amount of SRILEC USP support it receives, so that such support, combined with regulated revenues, provides the small ILEC an opportunity to earn a reasonable rate of return if the reported rate of return of such a small ILEC is based on expenses that it believes are reasonable and necessary. When adjusting monthly support, the commission will consider, among other things described in this section, the adequacy of basic rates to support universal service. A small ILEC that submits a written notice to participate in this section will continue to receive the same level of SRILEC USP support it was receiving on the date of the written notice until the commission makes a determination or adjustment under this section.

(e) Annual report of a requesting small ILEC.

(1) A small ILEC that submits a written notice under subsection (d) of this section must file an annual report each year with the commission, using commission-prescribed forms that are available on the commission's website. The initial annual report for a small ILEC that files a written notice under subsection (d) of this section must be filed within two months after the effective date of this section. Subsequent annual reports must be filed no later than May 15th of each year. All annual reports must be related to the most recent calendar year prior to the filing of the annual report.

(2) The annual report filed by a small ILEC under this subsection must include information on the following:

(A) Summary of revenues and expenses;

(B) Detail for all revenue, expense, and capital accounts;

(C) Invested capital;

(D) Intrastate federal income taxes calculated at the applicable tax rate;

(E) Network access service revenue;

(F) Weighted average cost of capital;

(G) Historical financial statistics;

(H) Proposed company adjustments;

(I) The name, job title, and total annual compensation of each officer, director, and, for investor-owned companies, owners and former owners (including each general manager and any other highly compensated employee that may not be designated as an officer of the company), and the name and compensation of each family member of officers, directors, owners, and former owners employed by the small ILEC;

(J) The amount and nature of each affiliate transaction, including transactions with family members of officers, directors, and, for an investor-owned company, owners and former owners;

(K) All detail and supporting documentation necessary to support each of the items above; and

(L) An authorized official's signature.

(3) The small ILEC must also provide its full and complete cost allocation manual.

(f) Commission staff's review of annual reports. Annual reports submitted under this section will be reviewed by commission staff to determine whether a small ILEC's support, when combined with regulated revenues, provide the small ILEC an opportunity to earn a reasonable rate of return and whether the reported rate of return of the small ILEC is based on expenses that the commission staff determines are reasonable and necessary.

(1) Timeline for review of the annual reports.

(A) During the review of an annual report, commission staff may submit requests for information to the small ILEC. Responses to such requests for information will be provided to the commission staff within ten days after receipt of the request by the small ILEC. If a small ILEC fails to timely provide information to commission staff, the small ILEC will be considered to be a Category 3 provider.

(B) Within 90 days after an annual report has been filed, commission staff will complete its review of the annual report and file a memorandum for the commission's consideration regarding a final recommendation on the reported or commission-staff adjusted rate of return.

(2) Commission staff's review of an annual report.

(A) Commission staff will review and may make adjustments to information contained in the small ILEC's annual report, such as:

(i) expenses that are not reasonable or necessary;

(ii) expenses listed under §26.201(c)(2) of this title (relating to Cost of Service);

(iii) expenses that are not in compliance with FCC rules;

(iv) inappropriate affiliate transactions;

(v) inappropriate cost allocations;

(vi) inappropriate allocation of federal universal service support; and

(vii) any other adjustments that commission staff may find appropriate.

(B) Commission staff will recalculate the small ILEC's reported rate of return and provide an adjusted rate of return if any adjustments were made in paragraph (2)(A) of this subsection.

(3) Separation of small ILECs into rate of return categories. Upon completion of commission staff's review of a small ILEC's annual report, commission staff will determine the appropriate category for the small ILEC within the following three categories based on the small ILEC's reported or commission-staff adjusted rate of return:

(A) Category 1. A rate of return of more than three percentage points below the FCC rate of return;

(B) Category 2. A rate of return within two percentage points above or three percentage points below the FCC rate of return; and

(C) Category 3. A rate of return of more than two percentage points above the FCC rate of return.

(4) Commission staff will file a memorandum for the commission's consideration of the categorization of each small ILEC in accordance with paragraph (1)(B) of this subsection.

(g) Treatment of small ILECs based on rate of return categories. Each category will be processed as set forth below.

(1) Category 1 - A small ILEC that has a reported or commission-staff adjusted rate of return in Category 1 may file an application for an adjustment to have its annual SRILEC USP support or basic rates increased to a level that would allow the small ILEC to earn an amount that would be considered a reasonable rate of return, except that the adjustment may not set a small ILEC's support level at more than 140 percent of the annualized support the provider received in the 12-month period before the date of the adjustment.

(2) Category 2 - A small ILEC that has a reported or commission-staff adjusted rate of return in Category 2 will be considered to be earning a reasonable rate of return and will not be eligible to file for an adjustment to its SRILEC USP support except as described in subsection (h)(2)(B) of this section. The commission may not initiate a proceeding against a small ILEC that has a reported or commission-staff adjusted rate of return within Category 2.

(3) Category 3 - For a small ILEC that has a reported or commission-staff adjusted rate of return in Category 3, the commission staff may initiate a proceeding to review and adjust the small ILEC's SRILEC USP support or basic rates to adjust the small ILEC's rate of return into the reasonable rate of return range. A small ILEC that has a commission-staff adjusted rate of return in Category 3 is not eligible to file for an adjustment to its SRILEC USP support except as described in subsection (h)(2)(B) of this section.

(h) Contested case procedures.

(1) Documents to be submitted. At a minimum, the following information must be provided by a small ILEC in a contested case proceeding, irrespective of whether such case is initiated by a small ILEC or commission staff:

(A) all the data required by subsections (e) and (f) of this section;

(B) responses to commission staff's requests for information in connection with the review of each small ILEC's annual report;

(C) the requested SRILEC USP support or rate adjustments; and,

(D) testimony and work papers necessary to support the requested adjustments.

(2) Qualification for contested case proceeding.

(A) Category 1 small ILECs. A small ILEC in Category 1, as identified in subsection (f)(3) of this section, may file an application that is eligible for administrative review or informal disposition to request an adjustment to its SRILEC USP or basic rates to allow the company to earn a reasonable rate of return.

(B) Category 2 or Category 3 small ILECs subsequent to rate of return adjustment by commission staff. A small ILEC that has a reported rate of return in Category 1 or Category 2, as identified in subsection (f)(3) of this section, but that has a commission-staff adjusted rate of return in Category 2 or Category 3, may file a petition to contest the commission-staff adjusted rate of return and may also request an adjustment to its SRILEC USP support or basic rates in the same proceeding. A small ILEC that has a reported rate of return in Category 2 but because of commission-staff adjustments the small ILEC is in Category 3, may file a petition to contest the commission-staff adjustments. However, the small ILEC may not request an adjustment to its SRILEC USP support or basic rates.

(C) Category 3 small ILECs. A small ILEC in Category 3, as identified in subsection (f)(3) of this section, is subject to a commission staff-initiated proceeding to review the company's annual report and reported rate of return, must submit the information listed in paragraph (1) of this subsection.

(3) Notice. Each small ILEC that files a contested case proceeding will provide notice as required by §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice will be published in the *Texas Register* and will be provided to the Office of Public Utility Counsel. Each Category 1 small ILEC that files an application under this section must provide notice to its customers that the company may be required to increase its rates as part of the adjustment to have its annual SRILEC USP support increased.

(4) Burden of proof. A small ILEC will bear the initial burden of production and the burden of persuasion.

(5) Timing to file a subsequent contested case. Once the commission issues an order in a contested case under this section, the small ILEC and commission staff may not file a subsequent contested case before the third anniversary of the date on which the small ILEC's most recent application for adjustment is initiated, unless good cause is proven.

(i) Confidentiality of information.

(1) A report or information that a small ILEC is required to provide to the commission under subsection (e) of this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(2) A third party may only access confidential information filed pursuant to subsection (h) of this section, or proceedings related to that filing, if the third party is subject to an appropriate protective order.

(3) This subsection does not apply to a subsequent contested case initiated under subsection (h) of this section, and no claim of confidentiality shall arise from this subsection in such a subsequent contested case.

(j) Commission adjustment of the small ILEC's revenue requirement and SRILEC USP support.

(1) Revised revenue requirements.

(A) In a proceeding conducted in accordance with subsection (h) of this section, the commission will determine the small ILEC's new revenue requirement necessary to allow the company to earn a reasonable rate of return; however, the commission may not set a small ILEC's support level at more than 140 percent of the annualized support the small ILEC received in the 12-month period before the date of the adjustment.

(B) A small ILEC that is in Category 1 cannot request an increase in the SRILEC USP support that would result in a rate of return greater than the minimum of the reasonable rate of return. In a proceeding for a small ILEC in Category 3, a small ILEC or commission staff may not request a decrease in the SRILEC USP support that would result in a rate of return greater than the maximum reasonable rate of return.

(2) SRILEC USP support payments to small ILECs. The commission will determine the amount of adjustment to the annual SRILEC USP support or basic rates for the small ILEC that will be needed to meet the new revenue requirement identified in this paragraph. The commission will determine the fixed monthly support payment for a small ILEC by dividing the annualized SRILEC USP support by 12. Each small ILEC that has SRILEC USP support adjusted under this section shall provide the TUSF administrator with a copy of the final order indicating the adjusted amount of SRILEC USP support.

(3) SRILEC USP support payments to ETPs other than small ILECs. The SRILEC USP support for ETPs other than a small ILEC will be determined by calculating the per-line support for each small ILEC's study area based on the most recent monthly support using December line counts for the small ILEC. The payment to each ETP other than a small ILEC will be calculated by multiplying the computed per-line amount for the given small ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(k) Miscellaneous items.

(l) Federal Universal Service Fund (FUSF) support. The amount of annual FUSF support received by the small ILEC that is considered to be an intrastate expense adjustment under Part 36 of the FCC's rules or by FCC order, regardless of the category of FUSF support, will offset the total intrastate expenses and be reflected as such in the small ILEC's annual report. The timing of any FUSF support will be considered when making a determination under subsection (j) of this section.

(2) Recovery of FUSF support from the TUSF in accordance with PURA §56.025. The amount of FUSF support recovered from the TUSF in accordance with PURA §56.025 that is considered an intrastate expense adjustment under Part 36 of the FCC rules or by FCC order, regardless of the category of FUSF support or type of budget control mechanism placed on FUSF support, will be shown as an offset to the total intrastate expenses in the small ILEC's annual report. The timing of any recovery of FUSF support from the TUSF in accordance with PURA §56.025 and the timing of any true-ups must be considered when making a determination under subsection (j) of this section.

(3) Commission authority. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D.

(l) Treatment of federal income tax expense.

(1) Accumulated deferred federal income taxes (ADFIT).

(A) For a small ILEC investor-owned utility (IOU) subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess ADFIT resulting from the Tax Cuts and Jobs Act of 2017 (TCJA), in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this section. For the purposes of this section, excess ADFIT is defined as the difference between the amount of ADFIT on the IOU's books after incorporating changes from the TCJA and the amount of ADFIT that would have been on the IOU's books had the tax changes in the TCJA not occurred.

(B) At such time that commission staff files a memorandum for the commission to categorize the IOUs' rate of return for 2017, the IOUs will stop recording on the books the regulatory liability for excess ADFIT.

(C) IOUs will either amortize the excess ADFIT regulatory liability over a period not to exceed five years or allow it to reverse along with the associated ADFIT according to the transaction that resulted in the ADFIT.

(2) Current federal income tax expense.

(A) For an IOU subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess current federal income taxes resulting from the TCJA, in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this section. For purposes of this section, excess current federal income tax expense is defined as the difference between the amount of revenue collected under current rates related to current federal income tax expense and the amount of revenue related to current federal income tax expense that should have been collected under rates reflecting changes in the TCJA.

(B) At such time that commission staff files a memorandum for the commission to categorize the IOUs' rate of return for 2017, the IOUs will no longer record on the books the regulatory liability for excess current federal income tax expense.

(C) An IOU will amortize the regulatory liability for the excess current federal income tax expense over a period not to exceed five years.

(D) An IOU will adjust its 2017 reported financial information to reflect the amount of current federal income tax expense for 2017 calculated as if the terms of the TCJA had applied to 2017 operations to calculate potential support from the SRILEC USP.

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

Filed with the Office of the Secretary of State on May 25, 2018.

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Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1002

The Texas Education Agency (TEA) proposes new §97.1002, concerning accountability and performance monitoring. The proposed new section would adopt in rule an applicable excerpt of the *2018 Accountability Manual.*

The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year.

Proposed new 19 TAC §97.1002 would adopt an excerpt of the *2018 Accountability Manual* into rule as a figure. The excerpt, Chapter 10 of the *2018 Accountability Manual,* describes the Hurricane Harvey Provision used to evaluate school districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey. The provision provides specific criteria that school districts, open-enrollment charter schools, and campuses must meet in order to receive a *Not Rated* label due to the effects of Hurricane Harvey.

Campuses will be evaluated under the Hurricane Harvey Provision if they meet at least one of the following criteria.

Criterion 1: The campus identified 10 percent or more of enrolled students in either the October snapshot data or in weekly crisis code reports finalized on March 9, 2018, with crisis codes 5A, 5B, or 5C. Campus enrollment is based on October snapshot data.

Explanation: The intent of the crisis codes is to identify a student who (1) was enrolled or was eligible to enroll in a local educational agency (LEA) impacted by Hurricane Harvey and enrolled in a different LEA during the 2017-2018 school year (5A); (2) was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey and enrolled in another campus in the same LEA during the 2017-2018 school year (5B); or (3) is identified as homeless because of Hurricane Harvey but has remained enrolled in his or her home campus during the 2017-2018 school year (5C). The crisis code criterion allows for accountability flexibility for those campuses with high numbers of students in one of the three referenced situations. The TEA has determined that the academic accountability ratings for a campus that has at least 10 percent of its students displaced by Hurricane Harvey may not accurately reflect campus performance.

Criterion 2: The campus reported that 10 percent or more of its teachers experienced homelessness due to Hurricane Harvey, as reported in the Homeless Survey announced February 14, 2018.

Explanation: Like crisis code 5C for students, the teacher homeless indicator allows for accountability flexibility for campuses with a substantial number of teachers who were/are homeless due to Hurricane Harvey. The TEA has determined that the academic accountability ratings for a campus that has at least 10 percent of its teachers displaced by Hurricane Harvey may not accurately reflect campus performance.

Criterion 3: The campus was reported to TEA as closed for 10 or more instructional days due to Hurricane Harvey.

Explanation: This criterion allows for flexibility for campuses with a substantial number of instructional days lost due to Hurricane Harvey. This provision is like provisions used in 2006 and 2009 for Hurricanes Rita and Ike. The TEA has determined that the academic accountability ratings for a campus that was closed for at least 10 days because of Hurricane Harvey may not accurately reflect campus performance.

Criterion 4: The campus was reported to TEA as displaced due to Hurricane Harvey either because the student population was relocated to another geographic location at least through winter break or the student population was required to share its own campus facility with the students of another campus closed as a direct result of Hurricane Harvey at least through winter break.

Explanation: This criterion allows for accountability flexibility for campuses whose facilities were completely or partially damaged to a point where the campus was closed. This also includes campuses that shared facilities with another campus. In many instances, students were forced into classrooms and school hours that were not ideal conditions for teaching and learning to take place. The TEA has determined that the academic accountability ratings of campuses whose entire student population was displaced by Hurricane Harvey may not accurately reflect campus performance. The TEA has also determined that the academic accountability ratings of campuses that serve students displaced by Hurricane Harvey may not accurately reflect campus performance.

School districts and open-enrollment charter schools will be evaluated under the Hurricane Harvey Provision if they meet either of the following criteria.

Criterion 1: School districts and open-enrollment charter schools will be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school districts or open-enrollment charter schools receive a *Not Rated* label as a result of the Hurricane Harvey Provision.

Explanation: A school district or open-enrollment charter school should not be rated for accountability purposes if all of the campuses within the school district or open-enrollment charter school are not rated using at least one of the Hurricane Harvey accountability provisions. School district and open-enrollment charter school data is based on the accumulated data of all of its campuses. If all of those campuses are not rated, it is assumed that the school district or open-enrollment charter school would not be rated as well. The TEA has determined that the academic accountability ratings of school districts and open-enrollment charter schools with no rated campuses due to Hurricane Harvey may not accurately reflect school district or open-enrollment charter school performance.

Criterion 2: If 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus labeled *Not Rated* under the Hurricane Harvey Provision, the school district or open-enrollment charter school will be labeled *Not Rated*.

Explanation: This provision allows for accountability flexibility for school districts and open-enrollment charter schools with a substantial portion of students enrolled in campuses not rated using one of the allowable Hurricane Harvey provisions. School district and open-enrollment charter school outcomes are largely based on the accumulated outcomes of campuses. It is assumed that, to some degree, the Hurricane Harvey Provision *Not Rated* campuses could impact school district or open-enrollment charter school outcomes. The TEA has determined it is reasonable to waive accountability ratings for school districts and open-enrollment charter schools in this situation. The TEA

has further determined that the academic accountability ratings for a school district or open-enrollment charter school that has at least 10 percent of its students displaced by Hurricane Harvey may not accurately reflect campus performance.

FISCAL NOTE. Penny Schwinn, chief deputy commissioner for academics, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the new section.

There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new section does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Schwinn has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the proposed new section would be informing the public of the existence of rating procedures used to evaluate school districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey by including this rule in the *Texas Administrative Code.* There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins June 8, 2018, and ends July 9, 2018. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A public hearing on the proposed new rule will be held at 8:30 a.m. on June 22, 2018, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Performance Reporting at (512) 463-9704.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A), which requires the commissioner to evaluate and consider the performance on achievement indicators, including those described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which defines criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203, 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L).

§97.1002. Accountability Rating System Provisions Related to Hurricane Harvey.

(a) In addition to the procedures in §97.1001 of this title (relating to Accountability Rating System), school districts, open-enrollment charter schools, and campuses impacted by Hurricane Harvey are rated for 2018 using additional provisions based upon the specific criteria described in the excerpted section of the *2018 Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1002(a)

(b) Ratings may be revised as a result of investigative activities by the commissioner of education as authorized under Texas Education Code, §39.057.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802336
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS
SUBCHAPTER V. AUTOLOGOUS ADULT STEM CELLS

25 TAC §1.461, §1.462

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §1.461, concerning Investigational Stem Cell Treatments and §1.462, concerning Informed Consent for Investigational Stem Cell Treatment.

BACKGROUND AND PURPOSE

House Bill (H.B.) 810, 85th Legislature, Regular Session, 2017, amended Texas Health and Safety Code, Chapter 1003, to require the Executive Commissioner of HHSC to adopt rules designating medical conditions that constitute a severe chronic disease or a terminal illness, and addressing informed consent. This would allow patients with such medical conditions to access and use investigational adult stem cell treatments if certain requirements have been met. This is a voluntary program. The bill directs the Texas Medical Board (TMB) to adopt rules relating to institutional review boards. The TMB proposed those rules in April 2018. The Executive Commissioner delegated rules development for the designation of medical conditions that constitute a severe chronic disease or a terminal illness, and informed consent to DSHS.

SECTION-BY-SECTION SUMMARY

Subchapter V has been changed to "Autologous Adult Stem Cells" so that this subchapter does not limit rules to adult stem cell banks.

New §1.461 concerns the investigational stem cell treatments for patients with certain severe chronic diseases or terminal illnesses.

New §1.462 concerns the informed consent for investigational stem cell treatment.

FISCAL NOTE

Donna Sheppard, DSHS Chief Financial Officer, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the sections will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand existing rules; and

(7) the proposed rules will not change the number of individuals subject to the rules.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Dr. Manda Hall, DSHS Associate Commissioner, Community Health Improvement, has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. The rules do not impose any additional costs to small businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to implement H.B. 810.

PUBLIC BENEFIT

Dr. Hall has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated through these rules is the implementation of H.B. 810, which was intended to allow patients with severe chronic disease or terminal illness to have greater access to investigational stem cell treatments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce 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

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Community Health Improvement Division, Department of State Health Services, Mail Code 1920, P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 776-7358; or by email to HHSRulesCoordinationOffice@hhsc.state.tx.us. Please specify "Comments on Stem Cell Treatment Proposed Rules" in the subject line.

To be considered, comments must be submitted no later than 30 days following publication of the proposal in the *Texas Register.* If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, faxed or emailed before midnight on the following business day to be considered.

STATUTORY AUTHORITY

The new rules are authorized by Texas Health and Safety Code, Chapter 1003, which requires the Executive Commissioner of HHSC to adopt rules designating medical conditions that constitute a severe chronic disease or a terminal illness and to address informed consent. Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075 authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules are authorized by Texas Health and Safety Code, Chapters 1001 and 1003; and Texas Government Code, Chapter 531.

§1.461. Investigational Stem Cell Treatments.

(a) Medical conditions that may be eligible for investigational stem cell treatments pursuant to the Health and Safety Code, Chapter 1003 must affect one or more body system.

(b) The medical condition identified by the patient's treating physician documented in the patient's medical record is a medical condition that is the subject of an investigational stem cell treatment approved and overseen by an institutional review board that is affiliated with:

(1) a medical school as defined by the Education Code, §61.501; or

(2) a hospital licensed under the Health and Safety Code, Chapter 241 that has at least 150 beds.

(c) The medical condition is documented by the patient's treating physician in the patient's medical record as specifically meeting the definition of severe chronic disease as described in paragraph (1) of this subsection or specifically meeting the definition of terminal illness as described in paragraph (2) of this subsection.

(1) Severe Chronic Disease. A condition, injury, or illness that:

(A) may be treated;

(B) is never cured or eliminated; and

(C) entails significant functional impairment or severe pain.

(2) Terminal Illness. An advanced state of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

§1.462. Informed Consent for Investigational Stem Cell Treatment.

(a) A physician administering an investigational stem cell treatment under this subchapter shall provide a written informed consent to the eligible patient. The written informed consent must meet or exceed the requirements found in 45 CFR §46.116.

(b) The patient must sign the informed consent form. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator, shall sign the informed consent form.

(c) The informed consent form must be maintained in the patient's medical record.

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

Filed with the Office of the Secretary of State on May 25, 2018.

TRD-201802350
Barbara Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 776-3740

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CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.49

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §133.49, concerning Reporting Requirements, in relation to requirements for hospitals to report donations of fetal tissue and abortion complications.

BACKGROUND AND PURPOSE

Senate Bill 8, 85th Legislature, Regular Session, 2017 (S.B. 8), added Texas Health and Safety Code, Chapter 173, and requires certain facilities, including hospitals, that donate human fetal tissue to report the specific type of fetal tissue donated and the institution of higher learning that received the donation. House Bill 13, 85th Legislature, First Called Session, 2017 (H.B. 13), amended Texas Health and Safety Code, Chapter 171, and requires certain facilities, including hospitals, to report each abortion complication that they diagnose or treat. The purpose of the amendment is to implement these bills.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §133.49 updates references to statutory reporting requirements in subsection (a); adds subsection (b), which requires hospitals that donate human fetal tissue to submit an annual report to HHSC that includes the specific type of fetal tissue donated and the institution of higher learning that received the donation by January 31st of the following year; and adds subsection (c), which requires hospitals to comply with the abortion complication reporting requirements in 25 TAC Chapter 139.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no implica-

tions to costs and revenues of state government as a result of enforcing and administering the section as proposed.

There could be an increase in costs for local governments owning or operating a hospital. HHSC assumes the costs will be related to collecting additional data and to staff time to perform additional reporting. HHSC lacks information to estimate the additional time for gathering data and reporting more frequently or additional information. The agency also lacks information on the hourly rate paid to staff who will be performing these duties. For these reasons the costs to local governments cannot be determined at this time.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amendment will be in effect, implementation of the proposed amended rule:

(1) will not create or eliminate a government program;

(2) will not affect the number of employee positions;

(3) will not require an increase or decrease in future legislative appropriations;

(4) will not affect fees paid to the agency;

(5) will not create a new rule;

(6) will expand the existing rule;

(7) will not change the number of individuals subject to the rule; and

(8) is unlikely to have a significant impact on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on small businesses or micro-businesses, as no hospitals in Texas are defined as small businesses or micro-businesses.

There is an anticipated adverse economic impact on rural communities operating hospitals. The additional costs would be related to the effort required to compile required data and submit the required additional reports. The additional cost will vary depending on the size of the facility and the number of fetal tissue donations and abortion complications encountered. For this reason, HHSC lacks data to provide an estimate of the economic impact.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules require hospitals to complete a detailed annual report for any donated fetal tissue, as well as a report of any abortion complications diagnosed and treated within 30 days of the diagnosis or treatment. The agency anticipates hospitals will incur additional costs to comply with the rule as proposed. The costs will relate to gathering information and submitting the required reports. These will vary by facility based on record-keeping methods, staff level performing tasks and the number of donations or complications, and therefore HHSC cannot provide an estimate of the average cost to compile a report.

There is no anticipated negative impact of local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to this rule.

PUBLIC BENEFIT

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the amendment will be in effect, the public will benefit from the amendment because the public will have accurate data for the types and amount of human fetal tissue donated to accredited institutions of higher learning and will obtain better data on numbers and types of abortion procedure complications. The amendment will comply with the statutory changes implemented by S.B. 8 and H.B. 13.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Health and Human Services Commission, Mail Code 1065, P.O. Box 13247, Austin, Texas 78711, or by email to DonationRulesComments@hhsc.state.tx.us. Please specify "Comments on Fetal Tissue Donation/Abortion Complication Proposed Rules" in the subject line.

Comments are accepted for 30 days following publication of the proposal in the *Texas Register.* If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed amendment is required by S.B. 8, which mandates that a facility that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, submit an annual report to HHSC; and by H.B. 13, which amends Texas Health and Safety Code, Chapter 171, and requires a facility to report each abortion complication that it diagnoses or treats. Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The amendment affects Texas Health and Safety Code, Chapters 171, 173, and 241, and Texas Government Code, §531.0055.

§133.49. Reporting Requirements.

(a) A hospital shall submit reports to the department in accordance with the reporting requirements in Texas Health and Safety Code, §§98.103[, ~~98.104,~~] and 98.1045 (relating to Reportable Infections[, ~~Alternative for Reportable Surgical Site Infections,~~] and Reporting of Preventable Adverse Events).

(b) A hospital that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to the Health and Human Services Commission that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The facility shall submit the annual report no later than January 31st of the subsequent year.

(c) A hospital that diagnoses or treats an abortion complication, as defined in §139.2 of this title (relating to Definitions), shall

comply with §139.5 of this title (relating to Additional Reporting Requirements).

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

Filed with the Office of the Secretary of State on May 22, 2018.

TRD-201802243
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 424-6968

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CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.26

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §135.26, concerning Reporting Requirements, in relation to requirements for ambulatory surgical centers (ASCs) to report donations of fetal tissue and abortion complications.

BACKGROUND AND PURPOSE

Senate Bill 8, 85th Legislature, Regular Session, 2017 (S.B. 8), added Texas Health and Safety Code, Chapter 173, and requires certain facilities, including ASCs, that donate human fetal tissue to report the specific type of fetal tissue donated and the institution of higher learning that received the donation. House Bill 13, 85th Legislature, First Called Session, 2017 (H.B. 13), amended Texas Health and Safety Code, Chapter 171 and requires certain facilities, including ASCs that are abortion facilities, to report each abortion complication that they diagnose or treat. The purpose of the amendment is to implement these bills.

SECTION-BY-SECTION SUMMARY

The proposed amendment adds to subsection (d) references to the abortion reporting requirements of Texas Health and Safety Code, Chapters 171 and 245, and 25 TAC Chapter 139; deletes a reference to a repealed statute in subsection (e); and adds subsection (g), which requires ASCs that donate human fetal tissue to submit an annual report to HHSC that includes the specific type of fetal tissue donated and the institution of higher learning that received the donation by January 31st of the following year.

FISCAL NOTE

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amendment will be in effect, implementation of the proposed amended rule:

(1) will not create or eliminate a government program;

(2) will not affect the number of employee positions;

(3) will not require an increase or decrease in future legislative appropriations;

(4) will not affect fees paid to the agency;

(5) will not create a new rule;

(6) will expand the existing rule;

(7) will not change the number of individuals subject to the rule; and

(8) is unlikely to have a significant impact on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on rural communities.

HHSC assumes many ambulatory surgical centers qualify as small businesses or micro-businesses and will experience some adverse economic impacts. Additional costs would be related to the effort required to compile required data and submit the required additional reports. The additional cost will vary depending on the size of the facility and the number of fetal tissue donations and abortion complications encountered. For this reason, HHSC lacks data to provide an estimate of the economic impact.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules require providers to complete a detailed annual report for any donated fetal tissue, as well as a report of any abortion complications diagnosed and treated within 30 days of the diagnosis or treatment, and are anticipated to require additional costs for persons required to comply with the rule as proposed. The costs will relate to gathering information and submitting the required reports. These will vary by facility based on record-keeping methods, staff level performing tasks and the number of donations or complications, and therefore HHSC cannot provide an estimate of the average cost to compile a report.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to this rule.

PUBLIC BENEFIT

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the amendment will be in effect, the public will benefit from the amendment because the public will have accurate data for the types and amount of human fetal tissue donated to accredited institutions of higher learning and will obtain better data on numbers and types of abortion procedure complications. The amendment will also comply with the statutory changes implemented by S.B. 8 and H.B. 13.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Health and Human Services Commission, Mail Code 1065, P.O. Box 13247, Austin, Texas 78711, or by email to DonationRulesComments@hhsc.state.tx.us. Please specify "Comments on Fetal Tissue Donation/Abortion Complication Proposed Rules" in the subject line.

Comments are accepted for 30 days following publication of the proposal in the *Texas Register*. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed amendment is required by S.B. 8, which mandates that a facility that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, submit an annual report to HHSC; and by H.B. 13, which amends Texas Health and Safety Code, Chapter 171 and requires a facility to report each abortion complication that it diagnoses or treats. Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The amendment affects Texas Health and Safety Code, Chapters 171, 173, and 243, and Texas Government Code, §531.0055.

§135.26. Reporting Requirements.

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

(d) An ASC that performs abortions shall comply with the reporting requirements specified in the Texas Health and Safety Code, Chapters 171 and 245, and Chapter 139 of this title [~~§245.011~~].

(e) The ASC shall submit reports to the department in accordance with the reporting requirements in Texas Health and Safety Code, §§98.103[~~, 98.104,~~] and 98.1045 (relating to Reportable Infections[~~, Alternative for Reportable Surgical Site Infections,~~] and Reporting of Preventable Adverse Events).

(f) (No change.)

(g) An ASC that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to the Health and Human Services Commission that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The ASC shall submit the annual report no later than January 31st of the subsequent year.

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

Filed with the Office of the Secretary of State on May 22, 2018.

TRD-201802244

Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 424-6968

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CHAPTER 137. BIRTHING CENTERS
SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

25 TAC §137.54

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §137.54, concerning Reporting and Filing Requirements, in relation to the donation of fetal tissue by birthing centers.

BACKGROUND AND PURPOSE

The purpose of the amendment is to implement Senate Bill 8, 85th Legislature, Regular Session, 2017 (S.B. 8), which mandates that an authorized facility licensed under Texas Health and Safety Code, Chapter 244, that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to HHSC that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §137.54 adds subsection (e), which requires facilities to submit an annual report to HHSC concerning fetal tissue donations.

FISCAL NOTE:

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amendment will be in effect, implementation of the proposed amended rule:

(1) will not create or eliminate a government program;

(2) will not affect the number of employee positions;

(3) will not require an increase or decrease in future legislative appropriations;

(4) will not affect fees paid to the agency;

(5) will not create a new rule;

(6) will expand the existing rule;

(7) will not change the number of individuals subject to the rule; and

(8) is unlikely to have a significant impact on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal, HHSC Deputy Executive Commissioner for Financial Services, has also determined that there will be no adverse economic effect on rural communities.

HHSC assumes many birthing centers will qualify as small businesses or micro-businesses and will experience some adverse economic impacts. Additional costs would be related to the effort required to compile required data and submit the required annual report. The additional cost will vary depending on the size of the facility and the number of fetal tissue donations. For this reason, HHSC lacks data to provide an estimate of the economic impact.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The proposed rules require providers to complete a detailed annual report for any donated fetal tissue and are anticipated to require additional costs for persons required to comply with the rule as proposed. The costs will relate to gathering information and submitting the required report. These will vary by facility based on record-keeping methods, staff level performing tasks and the number of donations, and therefore HHSC cannot provide an estimate of the average cost to compile a report.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to this rule.

PUBLIC BENEFIT

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the amendment will be in effect, the public will benefit from the amendment because the public will have accurate data for the types and amount of human fetal tissue donated to accredited institutions of higher learning. The amendment will also comply with the statutory changes implemented by S.B. 8.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Health and Human Services Commission, Mail Code 1065, P.O. Box 13247, Austin, Texas 78711, or by email to DonationRulesComments@hhsc.state.tx.us. Please specify "Comments on Fetal Tissue Donation Proposed Rules" in the subject line.

Comments are accepted for 30 days following publication of the proposal in the *Texas Register.* If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed amendment is required by S.B. 8, which mandates that a facility that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to HHSC. Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The amendment affects Texas Health and Safety Code, Chapters 173 and 244, and Texas Government Code, §531.0055.

§137.54. Reporting and Filing Requirements.

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

(e) A center that donates human fetal tissue under Texas Health and Safety Code, Chapter 173, shall submit an annual report to the Health and Human Services Commission that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The center shall submit the annual report no later than January 31st of the subsequent year.

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

Filed with the Office of the Secretary of State on May 22, 2018.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (512) 424-6968

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, and 336.1317; and the repeal of §336.1313.

Background and Summary of the Factual Basis for the Proposed Rules

This proposed rulemaking is needed to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." In most cases, rules which are designated by the NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules. Additionally, Texas Health and Safety Code (THSC), §401.245, requires the TCEQ to periodically revise party state compact waste disposal fees. The proposed rulemaking would also adjust the surcharge fees for compact waste disposal and remove the annual requirement for rate adjustment for disposal of Low-Level Radioactive Waste (LLRW) to allow flexibility to incorporate rate adjustments on an as-needed basis.

Section by Section Discussion

The commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§336.356, Soil and Vegetation Contamination Limits

The commission proposes to amend §336.356(c) to add the requirement that the licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface.

§336.1301, Purpose and Scope

The commission proposes to amend §336.1301(a) to remove the sentence that the compact waste disposal facility (CWF) is expected to be the sole facility for disposal of LLRW for generators within the states of Texas and Vermont.

The commission proposes to amend §336.1301(b) to clarify that the commission will establish the maximum disposal rates charged by the licensee for disposal of party state compact waste.

The commission proposes to amend §336.1301(c) to make minor clarifying changes.

§336.1305, Commission Powers

The commission proposes to amend §336.1305(a) to clarify that the rates that the commission adopts are the maximum disposal rates for disposal of party state compact waste at the CWF and to also update the language from "establishing" to "determining."

The commission proposes to amend §336.1305(c) to change the rates from "initial" to "new" or "revised."

The commission proposes to amend §336.1305(e)(2) to correct an incorrect cross reference.

The commission proposes to amend §336.1305(f) to delete the word "initial" relating to rate application or revision because it is no longer needed.

The commission proposes to delete and move §336.1305(h) ("Initiation of rate revision by the executive director") to proposed §336.1311(d) with modifications as discussed later in this preamble.

§336.1307, Factors Considered for Maximum Disposal Rates

The commission proposes to amend §336.1307 to modify the title of this section by adding the words "Determination of" to clarify that this section is about the determination of the maximum disposal rates.

The commission proposes to amend §336.1307(1) to remove the word "finality" from the phrase "compact waste disposal finality services."

§336.1309, Initial Determination of Rates and Fees

The commission proposes to amend §336.1309 to modify the title of this section by adding the words "Procedures for" and "New and Revised" and deleting the word "Initial" to clarify the contents of this section.

The commission proposes to amend §336.1309(a) to change the applicability of this section from "initial" rates and fees to "new or revised" rates and fees.

The commission proposes §336.1309(a)(2) to add the requirement that a licensee filing a rate application shall use the data in the submitted application and sustain the burden of proof that the proposed rate changes are just and reasonable and to also add the requirement that the data in the rate application may be modified only on a showing of good cause. The subsequent paragraphs are renumbered accordingly.

The commission proposes to amend renumbered §336.1309(a)(3) to remove the requirement that the executive director recommend one or more rates to the commission for approval and to also add the requirement that the licensee has 20 days to provide information if requested by the executive director, unless a different time is agreed upon.

The commission proposes §336.1309(a)(4) to add that the commission may disallow unsupported costs or expenses in the application if the necessary documentation or other evidence supporting these costs or expenses are not provided within a reasonable time.

The commission proposes to amend renumbered §336.1309(a)(5) to add the requirement that the licensee file with the commission proof of notice in the form of an affidavit stating that proper notice was mailed and the date of such mailing.

The commission proposes to amend renumbered §336.1309(a)(6) to add the requirement of providing notice of the licensee's proposed rates by publication in the *Texas Register.*

The commission proposes to amend §336.1309(b) to remove the applicability of this section from "initial" maximum disposal rates and to also clarify that the generator is a "party state" generator.

The commission proposes to amend §336.1309(c) and (d) to clarify that the generator is a "party state" generator.

The commission proposes to delete §336.1309(e) and (f) concerning initial rate proceedings, because they are no longer needed. The subsequent subsection is re-lettered accordingly.

The commission proposes to amend re-lettered §336.1309(e) to replace "initial" with "new or revised" maximum disposal rates and to also delete "volume adjustment" because it is no longer needed.

§336.1310, Rate Schedule

The commission proposes to amend the figure in §336.1310. The base disposal charge for waste volume is amended to reflect that Class A LLW charges are proposed to be $100 per cubic foot regardless of Routine or Shielded classification; the waste charge for sources is only for Class A sources; and delete the biological waste charge. The base disposal charge for radioactivity is amended by changing the curie inventory charge from $0.55 per millicurie (mCi) to $0.40 per mCi and to also delete the charges for carbon-14 inventory and for special nuclear material. The surcharges to the base disposal charge is amended to change the weight surcharge by removing the surcharge category of 10,000 to 50,000 pounds; to change the dose rate surcharge by removing the charges for one to five roentgen (R) per hour, greater than five to 50 R per hour, and greater than 50 to 100 R per hour; changing the category of greater than 100 R per hour to greater than 500 R per hour; and, to remove the cask (shielded waste) surcharge of $2,500 per cask.

§336.1311, Revisions to Maximum Disposal Rates

The commission proposes to amend §336.1311(a) to clarify that the generator is a "party state" generator and to also clarify that rates are for disposal services at the CWF.

The commission proposes §336.1311(b) to add that the maximum disposal rate may be adjusted at the request of the licensee to incorporate inflation adjustments and establishes the methodology of determining the amount of the inflation adjustment. The subsequent subsections are re-lettered accordingly.

The commission proposes to delete existing §336.1311(b) to remove the requirement that the maximum disposal rate shall be the initial rate because this is no longer needed.

The commission proposes to delete existing §336.1311(c) to remove the requirement that the maximum disposal rate be adjusted every January to incorporate inflation and volume adjustments because this is no longer needed.

The commission proposes §336.1311(d) (which is a modified version of deleted subsection (h) from §336.1305) to add language that the executive director may initiate revisions to the maximum disposal rates if good cause exists. The subsequent subsections are re-lettered accordingly.

The commission proposes §336.1311(d)(1) - (3) to add language to outline examples of good cause circumstances.

The commission proposes §336.1311(e) to add the ability of one or more party state generators to petition the executive director to initiate a revision to the maximum disposal rate and establishes the procedures for the executive director's review of this petition. The subsequent subsections are re-lettered accordingly.

The commission proposes to amend re-lettered §336.1311(f) to exclude inflation adjustments from the requirement that an application for revisions to the maximum disposal rate meet the requirements in §336.1309(a) and (b) and to also change when the licensee must provide notice to its customers about revisions to the maximum disposal rate from any revision to only when it is due to an inflation adjustment.

The commission proposes §336.1311(g) to move the language concerning computing allowable expenses to be its own subsection.

The commission proposes to delete existing §336.1311(f) because it is no longer needed.

§336.1313, Extraordinary Volume Adjustment

The commission proposes to repeal §336.1313 concerning extraordinary volume adjustments, as this rule is obsolete and it is no longer needed.

§336.1317, Contracted Disposal Rates

The commission proposes to amend §336.1317(a) to change who the licensee may contract with from "any person" to a "party state generator."

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government due to the administration or enforcement of the proposed rulemaking. Fiscal implications, not expected to be significant, are expected for Andrews County and those local jurisdictions that own or operate generators of LLRW such as hospitals or nuclear power plants. The proposed rules are anticipated to result in revenue losses for the State's General Revenue Fund and Andrews County, though the loss in revenue is not expected to be significant. Generators of LLRW will experience cost savings due to a reduction in waste disposal fees and surcharges. The cost savings for waste generators will depend on the amount of waste disposed.

The proposed rules are needed to ensure compatibility with federal regulations promulgated by the NRC to preserve the status of Texas as an Agreement State under 10 CFR. In most cases, rules which are designated by the NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules. Additionally, THSC, §401.245, requires the TCEQ to periodically revise party state compact waste disposal fees. The proposed rulemaking would also adjust the surcharge fees for compact waste disposal and remove the annual requirement for rate adjustment for disposal of LLRW to allow flexibility to incorporate rate adjustments on an as-needed basis.

The amendments and repeal are proposed under the Texas Radiation Control Act, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material. The commission is authorized to adopt rules and guidelines relating to control of sources of radiation and to ensure that the management of LLRW is compatible with applicable federal standards. The commission is required by rule to adopt and periodically revise party state compact waste disposal fees, and THSC, §401.412 provides the authority to regulate licenses for the disposal of radioactive substances. The licensee and operator of the LLRW compact facility in Andrews County, Texas, has also requested rulemaking that would reduce the number and price of surcharges assessed for compact waste disposal and to add clarity and remove obsolete language. This reduction in fees for out-of-compact generators may increase the amount of waste they receive from these generators.

The proposed rulemaking would make several changes. First, the proposed rulemaking would add a requirement for licensees to minimize the introduction of residual radioactivity, including the subsurface, for each site. The effect on licensees from this proposed change is minimal since licensees have always been effectively required to minimize contaminating their site but the NRC added this rule to add emphasis to this requirement.

Second, the proposed rulemaking amends §336.1310 to adjust the surcharge fees for compact waste disposal and to add clarity and remove obsolete language. Currently, the disposal rates serve as a floor for rates charged by the licensee to nonparty generators and the ceiling for rates charged to party state generators for disposal of LLRW. Amending §336.1310 will lower the minimum rate for nonparty generators and the maximum rate for party state generators, resulting in potentially lower disposal costs for both party and nonparty generators.

Third, the proposed rulemaking modifies §336.1311 by removing the annual requirement for rate adjustment for LLRW disposal at the CWF to incorporate inflation and volume adjustments. TCEQ staff determined that annual rate adjustments are not warranted and should be done on an as-needed basis.

Lastly, the rulemaking amends language in §§336.1301, 336.1305, 336.1307, 336.1309, and 336.1317 to add clarity and remove obsolete language, including the repeal of §336.1313.

Under current agency rules, the CWF license holder must remit to the commission 5% of the gross receipts from LLRW received for disposal at the CWF, which is then deposited into the State General Revenue Fund. In addition, the CWF license holder must remit to Andrews County 5% of the gross receipts from LLRW received for disposal at the CWF to be used for public works projects. Reducing the disposal fees will reduce the amount of money deposited into the General Revenue Fund and the amount of funds transferred to Andrews County.

The fee reduction is intended to make disposal at the site a more attractive option for out-of-compact LLRW waste generators. If this proves to be the case, there should be an increase in the amount of waste disposed at the facility and therefore the total revenue generated from disposal may increase, which would increase the overall financial amount generated from the 5% surcharge for the State's General Revenue Fund and Andrews County. However, the agency is not able to estimate the amount of the increase, if any, in revenue from waste disposed at the facility due to the adoption of the proposed rules. Therefore, the agency is not able to estimate any increase in funds transferred to General Revenue or Andrews County that would result from the decrease in fees and surcharges. The decrease in fees could result in some cost savings for LLRW disposal for those local governments who own or operate hospitals, nuclear power plants, or other LLRW generators.

The proposed reduction in disposal fees for LLRW is expected to result in a 12% reduction in revenue deposited to the State's General Revenue Fund, based on current waste streams. The commission collected and transferred to General Revenue approximately $1.3 million in Fiscal Year (FY) 2017 from the 5% surcharge for waste subject to the rule change. Based on this amount, the agency anticipates a potential decrease of $156,000 in funds transferred per year to the General Revenue Fund because of the proposed rule change. The same reduction is expected in funds transferred to Andrews County. Because the 5% surcharge was suspended for FYs 2018 and 2019 by House Bill (HB) 2662, 85th Texas Legislature, 2017, fiscal implications to the General Revenue Fund are not expected to begin until September 1, 2019 (FY 2020). The 5% surcharge suspension from HB 2662 did not apply to Andrews County and, therefore, their revenue reductions would begin after the adoption of this proposed rulemaking.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen from the implementation of the proposed rules will be minimal, although agency rules would be clearer and allow for more flexible administration of LLRW surcharges and fees.

No fiscal implications are anticipated for any individual due to the implementation or administration of the proposed rules. Privately owned waste generators such as hospitals will be affected. Waste generators will see a reduction in fees that they pay for the disposal of LLRW. Based upon FY 2017 data, approximately $26 million was generated from the gross receipt fees on the disposal of LLRW. If the proposed rules reduce the fees by 12%, then waste generators will see a cost savings from the reduction in fees of approximately $3.21 million.

The proposed reduction in disposal fees for LLRW will result in a reduction of revenue generated for the licensee of an estimated $3.21 million under current waste streams. The LLRW fee adjustment will result in a lowering of the maximum rate that they can charge compact generators of LLRW and a lowering of the minimum rate that they can charge out-of-compact LLRW waste generators. It is not possible for agency staff to determine if reducing the disposal fees will increase the market share of LLRW that will be disposed at the CWF. The proposed rule change should not negatively affect the licensee's revenue stream.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect, except Andrews County which has a population of less than 25,000. The agency anticipates a potential decrease of $156,000 in funds transferred per year to Andrews County. According to agency staff, this loss of revenue is not expected to significantly impact funding levels that are used for public works projects.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five years the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement assessment is not required because the proposed rules do not: create or eliminate a government program; require the creation or elimination of new/existing employee positions; require an increase or decrease in future legislative appropriations to the agency; create a new regulation; expand or limit an existing regulation; increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect it is not anticipated that there will be an adverse impact on the state's economy. The proposed rules are expected to: minimize the introduction of residual radioactivity for each affected site; lower the minimum fee rate for nonparty generators and the maximum fee rate for party state generators, thus potentially lowering disposal costs for both party and nonparty generators; remove the annual requirement for rate adjustment for LLRW disposal at the CWF to incorporate inflation and volume adjustments; and, add clarity and remove obsolete rule language. The fee reduction is intended to increase the amount of waste disposed at the facility and, therefore, the total revenue generated from disposal may increase, which would increase the overall financial amount generated from the 5% surcharge for the State's General Revenue Fund, Andrews County, and the

LLRW licensee. The fee reduction will also have cost savings for waste generators.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the proposed rules to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to ensure that §336.356(c) is compatible with federal regulations promulgated by the NRC, to adjust the surcharge fees for compact waste disposal, to remove the annual requirement for rate adjustment for disposal of LLRW, and to amend language for clarity and conciseness.

Further, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed rulemaking is not expected to be significant with respect to the economy as a whole or as a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements because the proposed rules: (1) do not exceed a standard set by federal law; (2) do not exceed an express requirement of state law; (3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rules; and (4) are not proposed solely under the general powers of the agency, but specifically under THSC, §401.425, which requires the commission to periodically revise party state compact waste disposal fees; and to ensure compatibility with federal regulations promulgated by the NRC.

The commission invites public comment of the Draft Regulatory Impact Analysis Determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposes this rulemaking for the specific purposes of ensuring that §336.356(c) is compatible with federal regulations promulgated by the NRC, adjusting the surcharge fees for compact waste disposal, removing the annual requirement for rate adjustment for disposal of LLRW, and amending language for clarity and conciseness. The proposed rulemaking substantially advances these stated purposes by proposing rules that incorporate NRC regulations requiring a licensee to minimize the introduction of residual radioactivity into a site, including the subsurface, and that are consistent with the waste disposal fee requirements in THSC, §401.245.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the proposed rulemaking adopting rules that meet the minimum standards of the federal regulations promulgated by the NRC because Texas Government Code, §2007.003(b)(4) exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 10 CFR Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended," the state must adopt rules designated by NRC as "compatibility items" to maintain its Agreement State status. Therefore, the portions of the proposed rulemaking adopting rules that meet the minimum standards of the NRC's regulations are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Nevertheless, the commission evaluated the entirety of the proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. Because no taking of private real property would occur by ensuring consistency with NRC regulations requiring a licensee to minimize the introduction of residual radioactivity into a site, including the subsurface; amending the surcharge fees for compact waste disposal; removing the annual requirement for rate adjustment for disposal of LLRW; and amending language for clarity and conciseness, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules,

31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 28, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-034-336-WS. The comment period closes on July 10, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Division, at (512) 239-6465.

SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §336.356

Statutory Authority

The amendment is proposed under: the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401: THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.151, which authorizes the commission to ensure that the management of low-level radioactive waste is compatible with applicable federal commission standards; THSC, §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances; and Title 10 Code of Federal Regulations (CFR) Part 150 which is necessary in order to preserve Texas as an Agreement State pursuant to 10 CFR Part 150. It is also proposed as authorized by Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; and TWC, §5.103, which establishes the commission's general authority to adopt rules.

The proposed amendment implements THSC, Chapter 401, and is proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.356. Soil and Vegetation Contamination Limits.

(a) No licensee may possess, receive, use, or transfer licensed radioactive material in such a manner as to cause contamination of soil or vegetation in unrestricted areas that causes a member of the public to receive a total effective dose equivalent in excess of 25 millirem (mrem)/year from all pathways (excluding radium and its decay products) and to the extent that the contamination exceeds the background level by more than:

(1) for radium-226 or radium-228 in soil, the following limits, based on dry weight, averaged over any 100 square meters of area:

(A) 5 picocuries/gram (pCi/g), averaged over the first 15 centimeters of soil below the surface;

(B) 15 pCi/g, averaged over each 15-centimeter thick layer of soil below the first 15 centimeters below the surface; and

(2) for radium-226 or radium-228 in vegetation, 5 pCi/g, based on dry weight.

(b) Regardless of [~~Notwithstanding~~] the limits set forth in subsection (a) of this section, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation as low as is reasonably achievable [~~(ALARA)~~].

(c) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface in accordance with the existing radiation protection requirements in §336.304 of this title (relating to Radiation Protection Programs) and radiological criteria for license termination in Subchapter G of this chapter (relating to Decommissioning Standards). If contamination caused by the licensee is detected in an unrestricted area, the licensee shall decontaminate any unrestricted area which is contaminated above the limits specified in subsection (a) of this section.

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

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802282
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 239-2613

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SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §§336.1301, 336.1305, 336.1307, 336.1309 - 336.1311, 336.1317

Statutory Authority

The amendments are proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which

provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The proposed amendments implement THSC, §401.245.

§336.1301. Purpose and Scope.

(a) State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. Under federal law, Texas is responsible for managing the low-level radioactive waste generated within its borders. The Texas Low-Level Radioactive Waste Disposal Compact, comprised of the states of Texas and Vermont, has as its disposal facility the compact waste disposal facility licensed under Subchapter H of this chapter (relating to Licensing Requirements Near-Surface Land Disposal of Low-Level Radioactive Waste). [~~The compact waste disposal facility is expected to be the sole facility for disposal of low-level radioactive waste for generators within the states of Texas and Vermont.~~]

(b) Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. The price to dispose [~~For the Compact Waste Facility Disposal, the price of disposing~~] of low-level radioactive waste at the Texas low-level radioactive waste disposal site will be determined by the commission. To protect Texas and Vermont compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, the commission will establish the maximum disposal rates charged by the licensee for disposal of party state compact waste in accordance with the rules in this subchapter.

(c) A licensee who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, Chapter 403 shall collect a fee to be paid by each person who disposes of [~~delivers~~] low-level radioactive waste in [~~to~~] the compact waste disposal facility [~~for disposal~~]. This fee shall be based on the commission approved maximum disposal rate, as specified in this subchapter.

§336.1305. Commission Powers.

(a) The commission shall adopt maximum disposal rates for disposal of party state compact waste at the compact waste disposal facility [~~establish rates to be charged by the licensee~~]. In determining [~~establishing~~] the rates, the commission shall ensure that they are fair, just, reasonable, and sufficient considering the value of the licensee's real property and license interests, the unique nature of its business operations, the licensee's liability associated with the site, its investment incurred over the term of its operations, and the reasonable rate of return equivalent to that earned by comparable enterprises.

(b) The commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates.

(c) In any proceeding involving a new [~~an initial~~] or revised [~~a change of~~] rate, the burden of proof shall be on the licensee to show that the proposed rate, if proposed by the licensee, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

(d) The commission may refer a request for a contested case hearing to the State Office of Administrative Hearings on the establishment of a rate under this subchapter.

(e) The commission may audit a licensee's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately charged and paid. The licensee shall comply with the commission's audit-related requests for information.

(1) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of waste disposal rates, payments and fees authorized by Texas Health and Safety Code, Chapter 401, and the veracity of information submitted to the commission.

(2) Each person subject to or involved with an audit or investigation under this subsection [~~(a) of this section~~] shall cooperate fully with the audit or investigation conducted by the executive director.

(f) After consideration of a [~~initial~~] rate application or revision, the commission shall establish, by rule, the maximum disposal rate and schedule.

(g) The authority to establish the rates under this subchapter may be [~~maybe~~] delegated to the executive director if the application is not contested.

[~~(h) Initiation of rate revision by the executive director.~~]

[~~(1) If good cause exists, the executive director may initiate revisions to the maximum disposal rates established under this subchapter which may include a true-up proceeding, subject to notice and opportunity for a contested case hearing. No revision to the maximum disposal rate is final until approved in the commission's rules establishing the maximum disposal rate. Good cause includes, but is not limited to:~~]

[~~(A) there are material and substantial changes in the information used to establish the maximum disposal rates;~~]

[~~(B) information, not available at the time the maximum rates were established, is received by the executive director, justifying a rate revision; or~~]

[~~(C) the rules or statutes on which the maximum disposal rates were based have been changed by statute, rule, or judicial decision after the establishment of the maximum disposal rates.~~]

[~~(2) One or more generators may petition the executive director to initiate a revision to the maximum disposal rate under the requirements of this subsection. The generator must provide a copy of the petition to the licensee at the time the petition is submitted to the executive director. The executive shall grant or deny the petition within 90 days of filing, or request more information from the petitioner. The executive director's decision on a petition filed under this paragraph is subject to a motion to overturn filed with the commission under Chapter 50 of this title (relating to Actions on Applications and Other Authorizations).~~]

§336.1307. Factors Considered for Determination of Maximum Disposal Rates.

Maximum disposal rates adopted by the commission shall consider the following factors and be sufficient to:

(1) allow the licensee to recover allowable expenses. Allowable expenses shall never include: legislative advocacy expenses; political expenditures or contributions; expenses in support of or promoting political movements, or political or religious causes; funds expended for membership in or support of social, fraternal, or religious clubs or organizations; costs, including interest expense, of processing a refund or credit ordered by the commission; or any expenditure found by the commission to be unreasonable, unnecessary or against public interest, including but not limited to, executive salaries, legal expenses,

penalties, fines, or costs not used or useful for the provision of compact waste disposal [~~finality~~] services;

(2) provide an amount to fund local public projects under Texas Health and Safety Code, §401.244;

(3) provide a reasonable opportunity to earn a reasonable rate of return on invested capital in the facilities used for management, disposal, processing, or treatment of compact waste at the compact waste disposal facility, which rate of return is expressed as a percentage of invested capital. In addition to the factors set forth in §336.1303(13) of this title (relating to Definitions), the rate of return should be reasonably sufficient to assure confidence in the financial soundness of the licensee and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally. The commission may, in addition, consider inflation, deflation, and the need for the licensee to attract new capital. The rate of return must be high enough to attract new capital but need not go beyond that. In each case, the commission shall consider the licensee's cost of capital, which is the weighted average of the costs of the various classes of capital used by the licensee:

(A) Debt capital. The cost of debt capital is the actual cost of the debt at the time of issuance, plus adjustments for premiums, discounts, and refunding and issuance costs.

(B) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock:

(i) Common stock capital. The cost of common stock capital shall be based upon a fair return on its market value; or

(ii) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts and refunding and issuance costs; and

(4) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, to provide financial assurance for the compact waste disposal facility as required by the commission under law and commission rules, and to reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission pursuant to Texas Health and Safety Code, §401.206.

§336.1309. Procedures for [~~Initial~~] Determination of New and Revised Rates and Fees.

(a) The licensee shall file an application with the executive director to establish new or revised [~~initial~~] maximum disposal rates that consider the factors identified in §336.1307 of this title (relating to Factors Considered for Determination of Maximum Disposal Rates). The application shall include exhibits, workpapers, summaries, annual reports, cost studies, a proposed reasonable rate of return on invested capital, proposed fees, and other information as requested by the executive director to demonstrate rates that meet the requirements of this subchapter. In addition, the application shall include revenue requirements for cost recovery from the compact waste disposal facility.

(1) The licensee shall submit a rate filing application package in accordance with the application prescribed by the executive director.

(2) A licensee filing a rate application shall be prepared to go forward at the hearing on the data which has been submitted in its application and sustain the burden of proof establishing that its proposed changes are just and reasonable. The data in the rate application may be modified only on a showing of good cause.

(3) [~~(2)~~] After receipt of the application, the executive director shall review the application [~~and recommend one or more rates to the commission for approval. In reviewing the application~~] and evaluate [~~evaluating~~] the rate information. The [~~, the~~] executive director may request additional information from the licensee and the licensee shall provide that information within 20 days of receipt of request, unless a different time is agreed to.

(4) If the licensee fails to provide, within a reasonable time after the application is filed, the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the unsupported costs or expenses.

(5) [~~(3)~~] The licensee shall provide notice of the application to all known customers that will ship or deliver waste to the compact waste disposal facility and shall provide notice of the application to any person by any method as directed by the executive director. The licensee shall file with the commission proof of notice in the form of an affidavit stating that proper notice was mailed and the date of such mailing.

(6) [~~(4)~~] The executive director shall maintain a Web site to inform the public on the process for consideration of the rate application and shall provide notice of the licensee's proposed rates by publication in the *Texas Register*.

(b) After notice and the opportunity for a contested case hearing, the commission shall establish the [~~initial~~] maximum disposal rates that may be charged by the licensee. Upon request for a contested case hearing by a party state [~~waste~~] generator [~~in the Texas Compact~~], the executive director shall directly refer an application to establish maximum disposal rates to the State Office of Administrative Hearings for a contested case hearing. Only the executive director, the licensee, or a party state generator has a right to a contested case hearing.

(c) A request for a contested case hearing filed by a party state generator shall contain the following information for each signatory generator:

(1) a clear and concise statement that the application is a request for a contested case hearing; and

(2) the generator's licensing numbers indicating the location or locations where the compact waste is generated.

(d) Party state generators [~~Generators~~] must initiate a request for a contested case hearing by filing individual requests rather than joint requests.

[~~(e) In the initial rate proceeding, the commission also shall determine the factors necessary to calculate the inflation adjustment, volume adjustment, extraordinary volume adjustment, and relative hazard.~~]

[~~(f) Initial rates shall be interim rates subject to a true-up in the first revision to maximum disposal rates pursuant to §336.1311 of this title (relating to Revisions to Maximum Disposal Rates). The true-up will measure the differences between projected and actual volumes of cubic feet of waste, allowable expenses, and invested capital for the time period that the interim rates are in effect, based on actual, historical amounts during that time period. The licensee shall refund to the generators who paid interim rates where money collected under the interim rates that is in excess of the adopted rates; or the licensee shall surcharge bills to the generators who paid interim rates to recover the amount by which the money collected under interim rates is less than the money that would have been collected under adopted rates.~~]

(e) [(g)] After determining the new or revised [initial] maximum disposal rates and [,] inflation adjustment[, and volume adjustment] under this subchapter, the commission shall direct the executive director to initiate expedited rulemaking to establish the rate by rule.

§336.1310. Rate Schedule.

Fees charged for disposal of party state [party-state] compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

[Figure: 30 TAC §336.1310]

§336.1311. Revisions to Maximum Disposal Rates.

(a) The maximum disposal rates that a licensee may charge party state generators shall be determined in accordance with this section, and §336.1307 of this title (relating to Factors Considered for Determination of Maximum Disposal Rates). The rates shall include all charges for disposal services at the compact waste disposal facility [site].

(b) The maximum disposal rates may be adjusted at the request of the licensee to incorporate inflation adjustments. If an inflation adjustment is requested, the maximum disposal rates shall be adjusted by a percentage equal to the change in price levels in the preceding period. The adjustment shall be made using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business.

[(b) Initially, the maximum disposal rates shall be the initial rates established pursuant to §336.1309 of this title (relating to Initial Determination of Rates and Fees).]

[(c) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation adjustments and volume adjustments. Such adjustments shall take effect unless the commission authorizes that the adjustments take effect according to an alternate schedule.]

(c) [(d)] The licensee may [also] file an application for revisions to the maximum disposal rates due to:

(1) changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross receipts basis against or collected by the licensee, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, commission regulatory fees, taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county;

(2) factors outside the control of the licensee such as a material change in regulatory requirements regarding the physical operation of the site; or

(3) changes in the licensee's revenue requirements or in any of the other factors in §336.1307 of this title that necessitate a change in the licensee's maximum disposal rates.

(d) The executive director may initiate revisions to the maximum disposal rates established under this subchapter if good cause exists. Good cause includes, but is not limited to:

(1) material and substantial changes in the information used to establish the maximum disposal rates;

(2) information, not available at the time the maximum rates were established, is received by the executive director, justifying a rate revision; or

(3) the rules or statutes on which the maximum disposal rates were based have been changed by statute, rule, or judicial decision after the establishment of the maximum disposal rates.

(e) One or more party state generators may petition the executive director to initiate a revision to a maximum disposal rate under the requirements of this section. The party state generator must provide a copy of the petition to the licensee at the time the petition is submitted to the executive director. The executive director shall grant or deny the petition within 90 days of filing, or request more information from the petitioner. The party state generator must provide a detailed and complete explanation of the existence of the good cause that is the basis of the petition. The executive director's decision on a petition filed under this paragraph is subject to a motion to overturn filed with the commission under Chapter 50 of this title (relating to Actions on Applications and Other Authorizations).

(f) [(e)] For revisions to maximum disposal rates, excluding inflation adjustments, the application must meet the requirements in §336.1309(a) and (b) of this title (relating to Procedures for Determination of New and Revised Rates and Fees). For revisions to maximum disposal rates due to an inflation adjustment, the licensee shall provide notice to its customers consistent with §336.1309(a)(5) of this title.

(g) In computing allowable expenses for revisions to maximum disposal rates, only the licensee's test year expenses as adjusted for known and measurable changes will be considered.

[(f) For any revisions to the maximum disposal rates, including inflation and volume adjustments, the licensee shall provide notice to its customers concurrent with the filing as consistent with §336.1309(a)(3) of this title.]

§336.1317. Contracted Disposal Rates.

(a) At any time, a licensee may contract with a party state generator [any person] to provide a contract disposal rate that is lower than the maximum disposal rate.

(b) A contract or contract amendment shall be submitted to the executive director for approval at least 30 days before its effective date. If the executive director takes no action within 30 days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in unreasonable discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 239-2613

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30 TAC §336.1313

Statutory Authority

This repeal is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed repeal is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The proposed repeal implements THSC, §401.245.

§336.1313. Extraordinary Volume Adjustment.

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

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Texas Commission on Environmental Quality
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 105. AUTISM PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §105.101, concerning Purpose; §105.105, concerning Definitions; §105.301, concerning Purpose; §105.307, concerning Eligibility; §105.309, concerning Enrollment; §105.311, concerning Services Provided; §105.313, concerning Length of Services; §105.315, concerning Participation Requirements; §105.507, concerning Rights of Children and Parents; §105.509, concerning Complaint Process; §105.605, concerning Cost Share; §105.607, concerning DARS Fee Schedule Amount; §105.608, concerning Insurance Payments; and §105.609 concerning Payer of Last Resort. HHSC also proposes the repeal of Subchapter B, DARS Comprehensive ABA Services, and all sections therein.

BACKGROUND AND PURPOSE

The proposed amendments increase provider flexibility regarding the limitations of service time for children with autism spectrum disorder (ASD). Upon a determination that a child merits ABA services, the hours of service provided could vary depending on the child's diagnosis on the spectrum and specific needs. This time limitation change will not affect total service hours.

Subchapter B, DARS Comprehensive ABA Services, is proposed for repeal, as this service is no longer available pursuant to the 2016-17 General Appropriations Act, House Bill 1, 84th Legislature, Regular Session, 2015 (Article II, Department of Assistive and Rehabilitative Services, Rider 28).

SECTION-BY-SECTION SUMMARY

The proposed amendment to §105.101 reflects the agency change from DARS to HHSC.

The proposed amendment to §105.105 reflects the agency change from DARS to HHSC. The proposed amendment to §105.105(23), Parent Training, is to clarify that the training is provided to a parent or guardian of a child with ASD. The proposed amendment to §105.105(25), Texas Resident, is to clarify that a Texas resident is a person who resides in Texas.

The proposed repeal of Subchapter B, DARS Comprehensive ABA Services, removes rules related to a service that is no longer available.

The proposed amendments to §§105.301, 105.307, and 105.309 reflect the agency change from DARS to HHSC and correct cross references to §105.105.

The proposed amendments to §105.311, Services Provided, add guidance to contractor requirements related to documentation of services provided, and reflect the agency change from DARS to HHSC.

The proposed amendment to §105.313(b), allows a contractor to plan treatment services based on the needs of the child within a given month, without increasing the total annual service hours per child allowed by the current rule. Currently, the contractor is allowed to provide up to 30 hours per month up to 6 months in a year for no more than 24 months. The amendment allows a contractor to provide up to 720 hours of treatment to a child as long as the child meets the eligibility requirements in §105.307. The contractor may not exceed 180 hours within a year. The start of the year begins on the day the first service is received.

The proposed amendment to §105.313(c) state that the time-limited services are not affected by any modifications in the contract between HHSC and the contractors, or by a change of contractor.

The proposed amendment to §105.313(e) states that ABA services end when the child has received 180 hours of service in a year; the child has received 720 hours before his or her 16th birthday; or when the child reaches his or her 16th birthday.

The proposed amendment to §105.313(f) states that when a child's case is closed with remaining hours left in a year, then the child may reapply for additional services in a subsequent year if 1) the child needs additional services and meets the eligibility criteria in §105.307; 2) there is available funding; and 3) the contractor is able to serve more children in accordance with §105.307.

The proposed amendment to §150.313(g) states that a family may choose to continue services with the contractor, at the family's expense, after the service limits noted in subsection (b) have been reached, and that HHSC is not liable for any costs incurred after the service limits have been reached.

The proposed amendment to §105.315(a) states that the child must attend at least 85 percent of the scheduled service appointments in a year. Other proposed amendments to the rule reflect the agency change from DARS to HHSC.

The proposed amendment to §105.507 reflects the agency change from DARS to HHSC.

The proposed amendments to §105.509 reflect the agency change from DARS to HHSC.

The proposed amendment to §105.605 reflect the agency change from DARS to HHSC.

The proposed amendments to §§105.607, 105.608, and 105.609 reflect the agency change from DARS to HHSC and correct cross references to §105.105.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will repeal an existing rule;

(7) the proposed rules will not change the number of individuals subject to the rule; and

(8) HHSC has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rules, as they will not be required to alter their business practices and the rules do not impose any additional costs on those required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this proposal because the rules do not impose a cost on regulated persons; are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Lesley French, Associate Commissioner for Health, Developmental, and Independence Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will allow children with autism spectrum disorders to be able to receive ABA services that meet their needs. Children affected with ASD often require different levels of treatment. Currently, a child is capped at 30 hours per month, for 6 months. If a child does not use their 30 hours per month, they will lose those hours. Many children may benefit from fewer hours a month spread over a longer period of time, while many children may benefit from a higher amount of hours per month over a shorter period of time. This rule change will allow a contractor to establish a treatment plan for a child with autism based on the individual needs of the child.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Joan Cooksey, Program Specialist, 1100 W. 49th Street, Mail Code 1938, Austin, Texas 78756; by fax to (512) 776-7162; or by e-mail to: HHSRulesCoordinationOffice@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 18R007" in the subject line.

SUBCHAPTER A. GENERAL RULES

40 TAC §105.101, §105.105

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§105.101. Purpose.

The purpose of the Texas Health and Human Services Commission (HHSC) Children's [~~Department of Assistive and Rehabilitative Services (DARS)~~] Autism Program is to provide autism services to children 3 through 15 years of age with an autism spectrum disorder. Services are provided through grant contracts with local community agencies and organizations utilizing Applied Behavior Analysis (ABA) or other treatment approaches. HHSC [~~DARS~~] is authorized to implement the program only to the extent that funds are appropriated by the Texas Legislature.

§105.105. Definitions.

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

(1) Adjusted gross income--The gross income of the family, as defined in this section, minus allowable deductions. Adjusted gross income is used to determine the amount of the monthly financial contribution required by a family.

(2) Allowable deductions--Expenses that are not reimbursed by other sources. Allowable deductions are limited to:

(A) the actual medical or dental expenses of the parent or dependent that are primarily related to alleviating or preventing a physical or mental defect or illness, were paid over the previous 12

months, are expected to continue during the eligibility period, and are limited to the cost of:

(i) diagnosis, cure, alleviation, treatment, or prevention of disease;

(ii) treatment of any affected body part or function;

(iii) legal medical services delivered by physicians, surgeons, dentists, and other medical practitioners;

(iv) medication, medical supplies, and diagnostic devices;

(v) premiums paid for insurance that covers the expenses of medical or dental care;

(vi) transportation to receive medical or dental care; and

(vii) medical or dental debt that is being paid on an established payment plan;

(B) child-care and respite expenses for a family member;

(C) costs and fees associated with the adoption of a dependent child; and

(D) court-ordered child support payments paid for a child who is not counted as a family member or dependent.

(3) Applied behavior analysis (ABA)--The design, implementation, and evaluation of systematic environmental changes to produce socially significant change in human behavior through skill acquisition and the reduction of problematic behavior. Applied behavior analysis includes direct observation and measurement of behavior and the identification of functional relations between behavior and the environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers, and other consequences are used to produce the desired behavior change.

(4) Autism spectrum disorders--The disorders found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) related to autism. An autism spectrum disorder (ASD) diagnosis of autistic disorder, Asperger's disorder, or pervasive developmental disorder not otherwise specified, made under a previous DSM, is acceptable.

(5) BCaBA--A board certified assistant behavior analyst.

(6) BCBA--A board certified behavior analyst.

(7) BCBA-D--A board certified behavior analyst-doctoral.

(8) Child--A son, daughter, foster child, or stepchild who is under age 19 living in the home.

(9) Contractor--A service provider under contract with HHSC [~~DARS~~] to provide autism services.

(10) Cost share--The amount of monthly financial contribution required of a family for a child to participate in the HHSC Children's [~~DARS~~] Autism Program, as described in Subchapter F of this chapter (relating to Cost Share). The cost share is determined using the HHSC [~~DARS~~] Fee Schedule and any applicable insurance deductible, coinsurance, and co-pay amounts. The cost share is the lesser of the fee determined using the HHSC [~~DARS~~] fee schedule, or applicable insurance deductible, coinsurance, and co-pay amounts.

~~[(11) DARS--Texas Department of Assistive and Rehabilitative Services.]~~

(11) [~~(12)~~] HHSC [~~DARS~~] Comprehensive ABA services--ABA services that are provided to children 3 through 5 years of age by a HHSC [~~DARS~~] contractor to treat all areas of developmental and behavioral needs.

(12) [~~(13)~~] HHSC [~~DARS~~] Focused ABA services--ABA services that are provided to children 3 through 15 years of age by a HHSC [~~DARS~~] contractor to treat one or more deficits or behaviors of excess rather than the full range of developmental domains.

(13) [~~(14)~~] Dependent--A child age 19 or older, parent, stepparent, grandparent, brother, sister, stepbrother, stepsister, or in-law; whose gross income is less than $3,900 a year; and for whom more than half of the person's support is provided for by the parent(s) or guardian(s) during the calendar year.

(14) [~~(15)~~] Direct contact--A term that applies to any person who has physical contact with, physical access to the home of, communication with, or access to confidential information regarding a child enrolled in the HHSC Children's [~~DARS~~] Autism Program or the child's family. Direct contact does not include casual or inadvertent physical contact with, communication with, or contact at an educational presentation or seminar with a child enrolled in the HHSC Children's [~~DARS~~] Autism Program or the child's family.

(15) [~~(16)~~] Family--The child's parent(s) or guardian(s), the child, other children under 19 years of age and other dependents of the parent or guardian.

(16) [~~(17)~~] Fiscal year--The state fiscal year. Begins on September 1 and ends on August 31 of the following year.

(17) [~~(18)~~] Gross income--All income received by the family for determination of the family's cost share, from whatever source, that is considered income by the Internal Revenue Service before federal allowable deductions are applied.

(18) HHSC--The Texas Health and Human Services Commission.

(19) Individualized Education Program (IEP)--A written document that is developed for each public school child who is eligible for special education.

(20) Interest list--A list, maintained by the contractor, of families who have indicated an interest in receiving services, and who meet the eligibility criteria.

(21) LEA--Local educational agency.

(22) Parent--The child's natural or adoptive parent; or the child's guardian.

(23) Parent training--Training that is provided to a parent or guardian as part of the ABA service, in the [~~natural~~] language used by the parents of the child when feasible. It is delivered either individually or in a group in a home, school, or clinic setting. It includes providing parent education on ABA in general; working collaboratively with parents to identify ways they can help their child at home to generalize learning to other environments, including school settings; and data review, program adjustment, and planning.

(24) Qualified professional--An actively licensed physician or psychologist with training and background related to the diagnosis and treatment of neurodevelopmental disorders.

(25) Texas resident--A person who resides [~~is~~] in Texas and intends to remain in the state, either permanently or for an indefinite period.

(26) Third-party payer--A company, organization, insurer, or government agency other than HHSC [DARS] that makes payment for health care services received by an enrolled child.

(27) Transition plan--A plan that identifies and documents appropriate steps and transition services to support the child and family to smoothly and effectively transition from the HHSC Children's [DARS] Autism Program to LEA special education services or other community activities, places, or programs the family would like the child to participate in after exiting the HHSC Children's [DARS] Autism Program.

(28) Treatment plan--A written plan of care, including treatment goals, for providing HHSC [DARS] autism treatment services to an eligible child and the child's family to enhance the child's development. The intensity and length of Children's Autism Program services is determined by the treatment goals included in the treatment plan. However, the length of autism services shall not exceed 24 months.

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

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Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 776-2837

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SUBCHAPTER B. DARS COMPREHENSIVE ABA SERVICES

40 TAC §§105.201, 105.207, 105.211, 105.213, 105.215

STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§105.201. Purpose.

§105.207. Eligibility.

§105.211. Services Provided.

§105.213. Length of Services.

§105.215. Participation Requirements.

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

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SUBCHAPTER C. DARS FOCUSED ABA SERVICES

40 TAC §§105.301, 105.307, 105.309, 105.311, 105.313, 105.315

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§105.301. Purpose.

The purpose of this subchapter is to provide information regarding HHSC [DARS] Focused ABA services.

§105.307. Eligibility.

(a) To be eligible for HHSC [DARS] Focused ABA services, a child must:

(1) be a Texas resident as defined in §105.105 [§105.105(25)] of this chapter (relating to Definitions);

(2) have a documented diagnosis on the autism spectrum made by a qualified professional; and

(3) be 3 through 15 years of age.

(b) Children become eligible on their third birthday and become ineligible on their 16th birthday.

(c) The parent must participate in parent training, defined in §105.105 [§105.105(25)] of this chapter [(relating to Definitions)] in order for their child to receive services.

(d) Eligibility for HHSC [DARS] Focused ABA services does not guarantee enrollment into the HHSC Children's [DARS] Autism Program. A child considered eligible for services by the contractor based on the criteria in this section is added to the contractor's interest list when there is no opening or funding available for HHSC [DARS] Focused ABA services in the local HHSC Children's [DARS] Autism Program.

§105.309. Enrollment.

(a) The contractor must:

(1) enroll eligible children in HHSC [DARS] Focused ABA services in accordance with the eligibility criteria in §105.307 of this subchapter (relating to Eligibility);

(2) provide written information to families regarding the estimated maximum monthly cost of service and the estimated amount of cost share that will be required for payment of services based on the fee schedule and any applicable insurance deductible, co-insurance and co-pay described in Subchapter F of this chapter (relating to Cost Share);

(3) verify benefits for all children identified with potential third-party payer coverage for services provided in the Autism Program and maintain related documentation on file; and

(4) provide written notification of rights of the child and parents or guardians noted in Subchapter E of this chapter (relating to Autism Program Rights).

(b) An offer of enrollment into HHSC [DARS] Focused ABA services is based on the continued availability of funding and the contractor's ability to serve more children.

(1) When a contractor is not immediately able to accept an eligible child into the HHSC Children's [~~DARS~~] Autism Program, and the family is interested in enrolling in services, the contractor places the family on an interest list. The interest list is reviewed every six months to determine if families are still eligible and interested in services.

(2) Children are removed from the interest list when an opening for services is available, the child is no longer eligible for the HHSC Children's [~~DARS~~] Autism Program, or when the family indicates they are no longer interested.

(3) Children who have received Focused Applied Behavior Analysis (ABA) Services and have remaining months of eligibility are given priority over children on the interest list who have not previously received services when they apply for additional Focused ABA Services if they continue to meet eligibility criteria and funds and staff capacity are available.

§105.311. Services Provided.

The contractor must:

~~[(1) provide no more than 30 hours per month of DARS Focused ABA services to enrolled children;]~~

(1) [~~(2)~~] develop a written treatment plan with the family for each child served, including plans for generalization of learned skills and behaviors to other environments;

(2) [~~(3)~~] provide and document parent training as a component of the services. Documentation must include:

(A) the date of the training;

(B) the names of those who participated in the training; and

(C) any information that [~~what~~] was discussed and shared by the contractor;

(3) [~~(4)~~] provide ongoing analysis and evaluation of each child's progress;

(4) [~~(5)~~] document services provided to each child;

(5) [~~(6)~~] collect data on operationally defined target behaviors. Data on at least three data points will be collected at baseline, during treatment, and post-treatment for each behavior that is identified in the child's treatment plan. No additional pre- and post-testing is required;

(6) [~~(7)~~] document efforts to coordinate services with the school setting the child attends to promote generalization;

(7) [~~(8)~~] create with the family and maintain documented transition plans for each child leaving [~~DARS Focused ABA~~] services; [~~and~~]

(8) [~~(9)~~] maintain in the child's record the following documentation related to the transition plan:

(A) timelines for each transition activity;

(B) the family's choice for the child to transition into a community or educational program or for the child to remain in the home; and

(C) appropriate steps and transition services to support the family's exit from the HHSC Children's [~~DARS~~] Autism Program services to LEA special education services or other appropriate activities, places, or programs the family would like the child to participate in after exiting services; and [~~.~~]

(9) document all services provided, including parent training, including:

(A) child's name;

(B) date of service;

(C) start and end time of service;

(D) location of service;

(E) names of those present for service;

(F) contractor's signature;

(G) description of the service and goals addressed; and

(H) progress toward goals.

§105.313. Length of Services.

(a) The length of services for a child is based on the child's specific needs but must not exceed a maximum of 24 months in the HHSC Children's [~~DARS~~] Autism Program in any combination of Comprehensive or Focused ABA services.

(b) The contractor may provide up to 720 total hours of HHSC Focused ABA services to a child as long as the child meets the eligibility requirements in §105.307 of this chapter (relating to Eligibility). The contractor may not exceed 180 hours within a year of the first date of service. [~~Services may not exceed six months in a 12-month rolling period, not all of which must be consecutive~~].

(c) The time-limited services are not [~~Neither the six-month annual limit nor the maximum 24 months of service is~~] affected by any modifications in the contract between HHSC [~~DARS~~] and the contractors, or a change in the contractor.

(d) HHSC [~~Children are exited from DARS~~] Focused ABA services end when [~~:~~]

[~~(1)~~] treatment goals are met or when service limits have been reached. [~~;~~]

~~[(2) service limits have been reached as follows:]~~

~~[(A) six months of service have been provided within a 12-month rolling period; or]~~

~~[(B) 24 months of service have been provided; or]~~

~~[(C) they reach their sixteenth birthday.]~~

(e) Service limits have been reached when the child:

(1) has received 180 hours of services in a year;

(2) has received 720 hours before his or her 16th birthday; or

(3) reaches his or her 16th birthday.

(f) [~~(e)~~] Children who exit HHSC [~~DARS~~] Focused ABA services with remaining hours [~~months~~] of service may reapply for additional HHSC [~~DARS~~] Focused ABA services based on the eligibility criteria in §105.307 of this chapter [~~determination~~], the child's needs, available funding, and the contractor's ability to serve more children in accordance with §105.307 of this chapter [~~(relating to Eligibility)~~]. These children are given priority over children on the interest list who have not previously received services.

(g) [~~(f)~~] A family may choose [~~, at its own expense, for a child~~] to continue receiving services, at the family's expense, from the contractor after service limits noted in subsection (b) of this section have been reached [~~the six-month annual limit or 24-month limit~~]. HHSC [~~DARS~~] is not liable for any costs incurred after service limits have been reached [~~the six-month annual limit or the maximum 24 months of service has been provided~~], including any costs incurred by a contractor providing those services.

§105.315. Participation Requirements.

(a) The child must attend [~~Attendance must be maintained at a level of~~] at least 85 percent of scheduled HHSC [~~DARS~~] Focused ABA services [~~each month, and~~] over the year [~~duration of treatment~~]. This is necessary for the child to fully benefit from the services [~~DARS Autism Program~~], regardless of the reason for the absence.

(b) Participation in parent training, a minimum of once every two weeks as defined in §105.105(23) of this chapter (relating to Definitions), is required for a child to receive services.

(c) The parent and the child must participate in pre-test protocols upon enrollment into HHSC [~~DARS~~] Focused ABA services. The parent and the child must participate in post-test protocols before exiting HHSC [~~DARS~~] Focused ABA services.

(d) If the parent and the child fail to meet these requirements, the child may be dismissed from the HHSC Children's [~~DARS~~] Autism Program. The requirements may be waived with written approval by HHSC [~~DARS~~].

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

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Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER E. AUTISM PROGRAM RIGHTS

40 TAC §105.507, §105.509

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§105.507. Rights of Children and Parents.

(a) In accordance with applicable legal provisions, the HHSC Children's [~~DARS~~] Autism Program does not, directly, or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any person on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For purposes of this program, the child must have an autism spectrum disorder, and that requirement is not considered discrimination against any person on the basis of disability.

(b) During the enrollment process, the contractor is required to provide the children and parents written notification of their rights included in subsection (a) of this section; §105.509 of this subchapter (relating to Complaint Process); §105.511 of this subchapter (relating to Confidentiality of Information); and §105.605(b) of this chapter (relating to Cost Share).

§105.509. Complaint Process.

(a) An individual or organization on behalf of a child enrolled in the HHSC Children's [~~DARS~~] Autism Program may file a complaint with HHSC [~~DARS~~] alleging that a requirement of the HHSC Children's [~~DARS~~] Autism Program was violated. A complaint may be filed directly with HHSC [~~DARS~~] without having been filed with the contractor.

(b) A complaint regarding the HHSC Children's [~~DARS~~] Autism Program must be filed within 180 calendar days of the alleged violation. A complaint filed 180 calendar days after the alleged violation may be dismissed without further review by the HHSC Children's [~~DARS~~] Autism Program.

(c) A complaint may be filed in any of the following ways:

(1) by phone [~~mail~~] to the HHS Office of the Ombudsman at 1-877-787-8999 [~~DARS Autism Program Specialist, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Austin, Texas 78756~~]; or

(2) by online submission at hhs.texas.gov/ombudsman [~~email to dars.inquiries@dars.state.tx.us.~~]

(d) The complaint must contain the following information:

(1) the name of the person filing the complaint;

(2) the name of the child for whom the complaint is filed;

(3) the name of the contractor;

(4) the date of the incident;

(5) the requirement and/or rule that was allegedly violated;

(6) a summary of the facts of the alleged violation; and

(7) the relief requested.

(e) HHSC [~~DARS~~] staff:

(1) logs the date the complaint was received;

(2) evaluates the complaint and seeks facts from the parties involved;

(3) provides a written decision within 60 calendar days to the complainant addressing each allegation;

(4) provides technical assistance and appropriate follow-up to the parties involved in the complaint as necessary; and

(5) retains the documentation of the complaint for five years.

(f) A complainant may appeal the determination of the complaint in writing [~~, addressed to the Director, Center for Policy and External Relations, 4800 North Lamar Boulevard, Austin, Texas 78756~~]. Such appeals must be submitted within 30 calendar days from the date of the written decision and will be addressed within 30 calendar days of receipt by HHSC [~~DARS~~]. The appeal determination is final.

(g) More information regarding the complaint process may be obtained by calling the HHS Office of the Ombudsman at 1-877-787-8999. [~~DARS Inquiries at 1-800-628-5115.~~]

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

Filed with the Office of the Secretary of State on May 25, 2018.

TRD-201802347

Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 776-2837

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SUBCHAPTER F. COST SHARE

40 TAC §§105.605, 105.607 - 105.609

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §117.082, which provides HHSC with the authority to administer the children's autism program in Texas.

§105.605. Cost Share.

(a) The family's cost share amount is the lesser of the:

(1) HHSC [~~DARS~~] fee schedule amount; or

(2) applicable deductible, copayment, and coinsurance amounts when the family has insurance that covers the ABA services.

(b) If the parent disagrees with the contractor's determination of the family's ability to pay the cost share, the parent can:

(1) request a review by the contractor's manager or program director;

(2) file an informal or formal complaint with the contractor;

(3) contact the HHS Office of the Ombudsman at 1-877-787-8999 [~~DARS Inquiries Line at 1-800-628-5115~~] for help resolving a problem or concern with the contractor; and

(4) file a formal complaint with HHSC [~~DARS~~] as noted in §105.509 of this chapter (relating to Complaint Process).

§105.607. HHSC [~~DARS~~] Fee Schedule Amount.

(a) The contractor is required to use the HHSC [~~DARS~~] Fee Schedule and instructions to calculate the monthly fee owed by the family for the services of each eligible child.

(b) Factors that affect the amount of monthly fee include the:

(1) monthly costs of services provided by the contractor as determined by the number of hours of service provided multiplied by the contractor's negotiated hourly rate with HHSC [~~DARS~~];

(2) adjusted gross income of the family as determined by the federal tax return filed for the previous year; or if the family did not file, the family's gross income minus the allowable deductions as defined in §105.105 [~~§105.105(1)~~] of this chapter (relating to Definitions);

(3) family size calculated by summing the number of parents or guardians, the child, and other dependents of the parents or guardians as defined in §105.105 [~~§105.105(22)~~] of this chapter; and

(4) number of children from a single family who are enrolled in the HHSC Children's [~~DARS~~] Autism Program.

(c) The fee for a single family with multiple children in service must be calculated for each child monthly. The family will owe 100 percent of the fee amount for the child with the highest fee and 50 percent of each additional child's fee.

(d) Information about HHSC [~~DARS~~] procedures and the fee schedule used to administer the HHSC Children's [~~DARS~~] Autism Program are available on the HHSC [~~DARS~~] website [~~and for viewing at DARS, 4800 North Lamar Boulevard, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on business days~~].

§105.608. Insurance Payments.

If the family has insurance that covers the ABA services and the in-network provider agreement between the insurance company and the HHSC [~~DARS~~] Autism contractor requires that the contractor accept the deductible, copayment, or coinsurance and insurance reimbursement as payment in full, then the family's cost share amount is the lesser of the HHSC [~~DARS~~] fee schedule amount or the deductible, copayment, or coinsurance.

§105.609. Payer of Last Resort.

HHSC [~~DARS~~] funds must not be used to pay for any portion of the required cost share. To the extent that the family or child is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, HHSC [~~DARS~~] funds must not be used to pay for the services until all other methods of payment have been applied.

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

Filed with the Office of the Secretary of State on May 25, 2018.

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Karen Ray
Chief Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 776-2837

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§2.5, 2.7, 2.14, 2.43, 2.45, 2.49, 2.81, 2.83 - 2.85, 2.101 - 2.103, and 2.105 - 2.110, the repeal of §§2.12, 2.104, and 2.131, and new §2.104, all relating to the environmental review of transportation projects.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTION

The department has identified the need to make various changes to its environmental review rules to add clarity, correct inconsistencies, eliminate unnecessary rule language, more accurately implement statutory requirements, and generally further streamline and improve the environmental review process. The proposed changes also implement Senate Bill 312, Section 21, 85th Legislature, Regular Session, requiring a hearing for projects that substantially change the layout or function of a connecting roadway or an existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes. The various changes proposed in this rulemaking are summarized below.

SUBCHAPTER A. GENERAL PROVISIONS

Amendments to §2.5, Definitions, add a definition for "bicycle lane." The department is amending §2.107, Public Hearing, in this rulemaking to add a requirement to hold a hearing for a project that "substantially changes the layout or function of a connecting roadway or an existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes." This amendment implements new Transportation Code, §203.023, enacted by the 85th Texas Legislature during its 2017 Regular Session. Section 2.5 defines "bicycle lane" as a lane that is dedicated *exclusively* for bicycle use to avoid an interpretation of new §203.023 that would require public hearings for projects that merely add wide shoulders, sidewalks, shared-use paths or other facilities that may be used by bicycles but also serve other purposes. The department believes that such an interpretation is not consistent with the legislative intent behind new §203.023. Section 2.107 is also amended to provide exceptions to the new hearing requirement for certain types of projects that involve bicycle lanes, but do not substantially change the layout or function of a roadway.

The amendments clarify that the definition of "environmental report" does not include an environmental issues checklist prepared to demonstrate a categorical exclusion determination, or a checklist used to perform a reevaluation of a project. The phrase, "environmental report," as used in the department's environmental review rules, is meant to refer to those types of reports and documents prepared in support of a categorical exclusion or reevaluation, not to the categorical exclusion determination or reevaluation itself.

The amendments revise the definition of "FHWA transportation project" to clarify that it includes a project for which the Federal Highway Administration (FHWA) has assigned its environmental review responsibilities to the department pursuant to an memorandum of understanding, such as the Memorandum of Understanding Between the Federal Highway Administration and the State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327, which was executed on December 16, 2014.

The amendments remove the definition for "MAPO." In this rulemaking, the department is repealing §2.104, "Meeting with Affected Property Owners (MAPO)," and replacing it with a new §2.104, "Notice and Opportunity to Comment." As a result the term is no longer used and the definition is unnecessary.

Amendments to §2.7, Project Sponsor, clarify that a department district or division may allow a public entity that qualifies to be a project sponsor, but does not wish to be a project sponsor, to develop an environmental review document or documentation of categorical exclusion for the district's or division's use. This clarification is needed because, on occasion, a local government, such as a county, city, or regional mobility authority, that is on the list of the types of entities that are eligible to be an official project sponsor for purposes of environmental review does not wish to be the official project sponsor, but still is willing to prepare the environmental review document for a project. This situation may arise when the local government simply wants to prepare a draft of the document for the department's review, but does not want to be involved in scoping or take on any of the other responsibilities generally required of project sponsors under the department's rules. In this situation, a department district or division may designate itself as the official project sponsor, but allow the local government to assist by producing a draft of the environmental review document. The existing rule is problematic because it may be read as allowing only those local governments that are *not* eligible to be the project sponsor to fulfill that role.

Section 2.12, Project Coordination, is repealed because it is overly broad in that it may be read as imposing an obligation to identify and coordinate with all entities that may have an interest in every project, including those projects that are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. For categorically excluded projects, the only coordination required should be that called for by specific memoranda of understanding with outside entities or laws, such as Section 106 of the National Historic Preservation Act or Section 7 of the Endangered Species Act. Further, the existing rule requires the department to identify and coordinate with all entities that "may have an interest" in a given project. It is difficult for the department to comply with this requirement because it is not always clear which outside entities "may have an interest" in a given project. For these reasons, it does not make sense to have a rule of broad application that requires the department to coordinate with outside entities on all projects, even if not required by any specific memoranda of understanding or law. The department will, of course, regardless of the class of action (categorical exclusion, environmental assessment, or environmental impact statement), continue to honor its existing memoranda of understanding with resource agencies and any applicable laws that require the department to coordinate with an outside entity. In addition, for environmental impact statement-level projects, the department's rules will continue to require the development of a coordination plan. *See* 43 T.A.C. §§2.84(c)(1)(A) and 2.103. And for environmental assessment-level projects, in this rulemaking the department is amending its environmental assessment rule, §2.83, to require coordination with interested governmental entities.

Amendments to §2.14, Project File, remove the prohibition against disclosing a draft environmental review document or documentation of categorical exclusion before the department delegate approves it for public disclosure. The department prefers to not have incomplete, early, or multiple drafts of the same document circulating in the public domain. However, a request for a document under the Texas Public Information Act is governed by that Act rather than a rule of the department.

SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

Amendments to §2.43, Project Sponsor Responsibilities, revise paragraph (2) to recognize that environmental reports may be prepared in support of documentation of categorical exclusion.

In paragraph (5) the reference to §2.12, Project Coordination, which is being repealed, is removed. The paragraph is also revised to state that the project sponsor conducts any required coordination, for example with resource agencies, only if both the department and the entity with which coordination is being conducted agree. For some types of coordination, the department may wish to be the entity that conducts the coordination in the interest of consistency among projects and maintenance of the relationship with the respective resource agency. Therefore, the rule should allow the project sponsor to conduct coordination only when the department agrees.

Amendments to §2.45, Optional Early Submittal of Environmental Reports, remove the following sentence, "[~~n~~]othing in this subchapter requires the preparation of environmental reports for the department's review." While it is correct that no provision of the department's environmental review rules requires any specific

environmental report to be prepared, it is common for the department to identify certain types of reports during the scoping process that must be prepared by the project sponsor to comply with the department's guidance and processes. Examples include a historical resources survey and an archeological background study. This revision is needed to avoid a misconception that environmental review may, in all cases, be performed by a project sponsor without preparing any environmental reports.

Amendments to §2.49, Technical Review, remove the statement that a purpose of technical review of an environmental review document is to confirm that the document is "legally sufficient." This language is problematic because it may be read to imply legal sufficiency review, which is a special type of review by an attorney that is required only for certain types of documents, such as an FHWA transportation project final environmental impact statement. The amendment clarifies that a purpose of technical review is to confirm that the document is "compliant with applicable regulatory requirements."

SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

Amendments to §2.81, Categorical Exclusions, update and clarify the intention of the section. In subsection (a)(3) the reference to §2.131 is removed because that section is being repealed in this rulemaking. Subsection (b) is revised to improve clarity and readability. Paragraph (3) is amended to remove the requirement that the project sponsor must indicate on the environmental issues checklist if coordination is required, and if so, that the portion of coordination that can be completed before final approval of the environmental review document has been completed. Resource agency coordination is tracked in the department's electronic Environmental Compliance and Oversight System. Therefore, there is no need for this data to also be captured on the environmental issues checklist used to make the final categorical exclusion determination. Additionally, the reference to "environmental review document" is incorrect, as the department uses an environmental issues checklist to make categorical exclusion determinations.

Subsection (c)(2) is revised to state that the action may not involve unusual circumstances "such as," rather than "or lead to," the list of three unusual circumstances in subsections (c)(2)(A)-(B). The phrase, "such as," is more appropriate because the three conditions listed are examples of the types of unusual circumstances that would disqualify a project from being a categorical exclusion.

Amendments to §2.83, Environmental Assessments, add a new subsection (c) regarding coordination. The new subsection removes the reference to §2.12, which is being repealed, and more accurately describes the type of coordination that the department intends to conduct for environmental assessment-level projects. As explained in new subsection (c), project sponsors must coordinate with any governmental entities that have indicated interest in the project. This provision is based on elements of FHWA's analogous rule regarding coordination for environmental assessment-level projects at 23 C.F.R. §771.119(b). Of course, any coordination required under a memorandum of understanding with a resource agency or required by an applicable law, such as Section 106 of the National Historic Preservation Act or Section 7 of the Endangered Species Act, must still be conducted regardless of the rule requirement. New subsection (c) also clarifies that it is generally the project sponsor's responsibility to conduct any required coordination, but only if the department and the entity with whom coordination is being conducted agree. In some cases, either the department or the coordinating agency may wish for coordination to be conducted by the department, and specifically, the department's Environmental Affairs Division.

Amended subsection (d) indicates that only a summary of public involvement need be included in the body of an environmental assessment. There is no requirement or need to recite or include within an environmental assessment the actual comments received. Any comments received as part of a public meeting or public hearing are compiled and addressed as part of the public meeting or public hearing documentation. While the public meeting or public hearing documentation is an important part of the environmental review process, it is physically a separate document from the environmental assessment itself due to its potential length and bulkiness. The comment/response matrix may be included as an appendix to the environmental assessment, but the environmental assessment must always summarize any public input received and explain where the public meeting or public hearing documentation may be inspected and copied.

Amended §2.83 also removes the prohibition against disclosing drafts of EAs prior to approval for public disclosure by the department delegate. As explained in connection with amendments to §2.14, Project File, the department prefers to not have incomplete, early, or multiple drafts of the same document circulating in the public domain. However, a request for a document under the Texas Public Information Act is governed by that Act.

Finally, subsection (h) is revised to provide a more accurate description of a "finding of no significant impact" or "FONSI." The existing definition of a FONSI at subsection (h)(1) states that a FONSI "briefly presents the reasons why" a project will not have a significant effect on the human environment. However, it is more accurate to describe a FONSI as simply concluding that the project will not have a significant effect on the human environment, with reference to the various explanations and discussions in the environmental assessment for the project. It is redundant and not necessary for the FONSI to present reasons why there will be no significant effect.

Amendments to §2.84, Environmental Impact Statements, remove the statement in subsection (a) that the rule applies "if the project is of a type for which an EIS is typically prepared," while keeping the other applicability trigger, "if there are likely to be significant environmental impacts." The department does not intend to convey that there is any type of project for which an EIS must be prepared, without regard to the likelihood of significant environmental impacts. Rather, the need for an environmental impact statement should depend solely on the likelihood of significant environmental impacts. If there is substantial uncertainty about that likelihood, the project sponsor may instead prepare an environmental assessment under §2.83, which will determine whether an environmental impact statement is required.

Subsection (b)(2) is amended to remove the reference to §2.12, Project Coordination, because that section is being repealed. Coordination for environmental impact statement-level projects will continue to be conducted under the coordination plan required by §2.84(c)(1)(A) and §2.103.

Amended subsection (c)(1)(B) clarifies that it is generally the project sponsor's responsibility to conduct any required coordination, but only if the department and the entity with whom coordination is being conducted agree. In some cases, either the department or the coordinating agency may wish for coordination to be conducted by the department, and specifically, the department's Environmental Affairs Division.

Subsection (f)(3) is corrected to indicate that a notice of availability of a final environmental impact statement is published in either the *Texas Register* or the *Federal Register*, pursuant to §2.108(c)(4).

Amendments to §2.85, Reevaluations, remove the reference to §2.12, Project Coordination, as that rule is being repealed.

SUBCHAPTER E. PUBLIC PARTICIPATION

Amendments to §2.101, General Requirements, revise a reference in subsection (b) to a Meeting with Affected Property Owners, to instead refer to a Notice and Opportunity to Comment. Section 2.104, Meeting with Affected Property Owners (MAPO), is being repealed by this rulemaking and replaced with a new §2.104, Notice and Opportunity to Comment.

Subsection (e) is revised to indicate that the project sponsor, in consultation with the department delegate, will determine whether any notice required by this chapter must be "provided," rather than "published," in another language in addition to English. This revision reflects that publication is not the only means of providing notice under Subchapter E.

Amendments to §2.102, Notice of Intent, eliminate the requirement to publish in a newspaper a notice of intent (NOI). An NOI signals the department's intent to begin the process for preparing an environmental impact statement for a transportation project. The department believes that the remaining requirement to publish an NOI in the *Texas Register* or *Federal Register*, depending on whether the project is or is not federally funded, should be sufficient to alert those entities with interest in the department's environmental impact statement-level projects. Additionally, on an environmental impact statement-level project, scoping meetings take place very early in the environmental review process, and are the primary means by which early public involvement in a project occurs. For any given environmental impact statement-level project, the project sponsor will determine an appropriate public outreach method for announcing scoping meetings at its discretion. For most department projects, the project sponsor is the department district in which the project is located. Certain local government entities may also be project sponsors. *See* 43 T.A.C. §2.7, Project Sponsor. Public outreach methods for public scoping meetings may include newspaper notice, website notice, changeable message signs, social media, email, or any other method determined to be appropriate by the project sponsor.

There would likely be cost savings associated with elimination of the requirement to publish NOIs in the newspaper. The department estimates that it issues approximately two NOIs per year. In the department's experience, newspaper notice publication costs for a department notice can range from approximately $100 to approximately $5,700 per notice, depending on various factors such as the location, newspaper, day of week, type and size of advertisement, and section of the newspaper. Based on these figures, the department estimates that this amendment of §2.102 could result in a potential cost savings of approximately $200 to $11,400 per year. This does not take into account costs associated with publishing additional notices in languages other than English, which may be appropriate in certain circumstances. These savings would, potentially, be realized by either the department, or for a local government-sponsored project, the local government project sponsor. Because it is impossible to predict exactly how many notices will be published in a given year, and what the costs of those notices will be, the department cannot reasonably calculate any more specific estimate of cost savings.

Amendments to §2.103, Coordination Plan for EIS, clarify that a copy of the approved coordination plan shall be made available to the public "on request." This clarification is needed because there is no separate notice of availability of an approved coordination plan on an environmental impact statement-level project.

The amendments repeal §2.104, Meeting with Affected Property Owners (MAPO), and replace it with a new §2.104, Notice and Opportunity to Comment. MAPOs are not statutorily required. Additionally, the term, "MAPO, does not accurately describe a form of public participation typically provided under §2.104. As allowed by the existing section, oftentimes the department conducts the "MAPO" by written letter, in which case there is no actual face-to-face meeting with the property owner. Further, the requirement in the existing section to hold a MAPO when a project requires a detour or a road or bridge closure, is problematic. When a project involves a detour or a road or bridge closure, all persons who depend on the roadway are "affected." It is, therefore, difficult for department staff to decisively and accurately determine which property owners are, and are not, "affected" by a detour in order to comply with the existing MAPO rule. These difficulties are exacerbated by the fact that it is often not clear at the environmental review stage whether a project will even require a detour or road or bridge closure, as this type of detail is sometimes not known until construction plans are established. Other aspects of existing §2.104 have caused confusion in the department's experience. Specifically, the existing section refers to "minimal" right-of-way acquisition as a MAPO trigger, but does not further specify what amount qualifies as "minimal." It also fails to explicitly indicate that no MAPO is required if the project triggers a higher level of public participation, namely a public meeting, opportunity for public hearing, or public hearing. However, this has been the department's interpretation, as notices of opportunities for public hearings and notices of public hearings are provided to adjacent property owners under existing §§2.106(c) and 2.107(c)(2), respectively, and, although not required by rule, notices of public meetings are also oftentimes provided to adjacent property owners.

New §2.104, Notice and Opportunity to Comment, addresses these issues by simply providing that when a project will acquire any new right-of-way, and no notice of public meeting, opportunity for public hearing, or public hearing will be provided to the affected property owners, then the department must notify the affected property owners and provide them an opportunity to provide comments on the project as part of the environmental review process. The section also establishes a 15-day comment period, which is consistent with the department's approach with respect to public meetings and public hearings. Although the new section does not refer to a "meeting" with affected property owners during the environmental review process, department staff may choose to meet in person or by telephone to discuss any concerns raised by a property owner after receiving the required notice.

Additionally, new §2.104 implements Transportation Code, §203.022 by requiring the provision of notice and opportunity to comment to adjoining landowners and local governments and public officials when a project involves added capacity or the construction of a highway at a new location. Historically, the department has implemented Transportation Code, §203.022 by requiring an opportunity for public hearing for added-capacity projects (*see* existing §2.106(b)(1)(C)), and an actual

public hearing for new location highway projects (*see* existing §2.107(b)(4)(C)), and requiring that notices of both opportunities and actual hearings be provided to landowners abutting the roadway within the proposed project limits, as well as to affected local governments and public officials (*see* existing §2.106(c)(3) and §2.107(c)(3)). However, the department believes that it is more consistent with the wording of Transportation Code, §203.022 to simply provide notice and opportunity to comment in these scenarios. As with notices to owners of property to be acquired as part of the proposed project, the new section establishes a 15-day comment period, which is consistent with the department's approach with respect to public meetings and public hearings. And again, the new section provides that if a notice of a public meeting, opportunity for public hearing, or public hearing is provided to the adjoining landowners, local governments, and public officials, then additional notice under new §2.104 is not required.

Amendments to §2.105, Public Meeting, add a reminder to provide notice of a public meeting to any public official, individual, or affected interest group that has expressed an interest in a transportation project. This is a general requirement applicable to public participation activities under existing §2.101, General Requirements. However, it is appropriate to have a provision reminding the reader of this obligation within the public meeting section.

Amendments to §2.106, Opportunity for Public Hearing, add a cross-reference to §2.107 in subsection (a) for further clarity. Subsection (b)(1)(B), which requires an opportunity for public hearing if a project "substantially changes the layout or function of connecting roadways or of the facility being improved" is repealed. The 85th Texas Legislature recently enacted new Transportation Code, §203.023, which requires a hearing, not merely an opportunity for one, for a project that substantially changes the layout or function of a connecting roadway or an existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes. Therefore, the "substantial change in layout or function" trigger for an opportunity for public hearing is being removed, and a trigger is added in §2.107, Public Hearing, to implement newly enacted Transportation Code, §203.023.

Subsection (b)(1)(C), which requires an opportunity for public hearing when a project adds capacity is also repealed. Transportation Code, §203.022 only requires notice and opportunity to comment be provided to adjoining landowners and affected local governments and public officials for added-capacity projects. Therefore, the department is re-implementing §203.022 under new §2.104, Notice and Opportunity to Comment, and removing this trigger from §2.106.

Sections 2.106 and 2.107 are amended to state that the project sponsor must "provide," rather than "mail," notice to landowners, affected local governments, and public officials. This revision is needed because there are other methods, such as email, by which this notice may be provided. Amendments to those sections add reminders to provide notice of an opportunity for public hearing or public hearing to any public official, individual, or affected interest group that has expressed an interest in a transportation project. This is a general requirement applicable to public participation activities under existing §2.101, General Requirements. However, it is appropriate to have provisions reminding the reader of this obligation within the opportunity for public hearing and public hearing rules.

Additionally, §2.106(c) is amended to revise the notice period for an opportunity for public hearing from 30 days to 15 days. In 2016, the department amended §2.107, Public Hearing, to revise the notice period for a public hearing from 30 days to 15 days. (41 TexReg 5234, 5238 (July 15, 2016)). The department's experience since making that regulatory change has been that a minimum of 15 days' notice for a public hearing is sufficient. In retrospect, the department should have similarly shortened the notice period for an opportunity for public hearing in 2016, given that the public should be able to determine relatively quickly after receiving notice of an opportunity for public hearing whether a project affects them and whether to request a hearing. Also, if a public hearing is required following an opportunity for public hearing, additional notice of the hearing will be provided in accordance with §2.107. For purposes of clarity, language is also added to explain that, for mailed notices, notice will be considered to have been provided three days after the notice is mailed.

Both §2.106 and §2.107 are revised to require the public hearing to be held or opportunity to be afforded after "preliminary" location and design studies are prepared. This revision is needed to clarify that the sections do not require all location and design studies be prepared and finalized prior to holding a hearing or affording an opportunity for one.

Both §2.106 and §2.107 are revised to no longer require that the documentation of categorical exclusion be approved for public disclosure by the department delegate prior to holding the hearing or affording the opportunity one. Projects that qualify as categorical exclusions are generally smaller-scale projects that are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. For categorical exclusions, there is no draft environmental assessment or environmental impact statement for the public to review in connection with a public hearing. Rather, the department uses an electronically-signed form to make a CE determination for a project in the department's Environmental Compliance Oversight System (ECOS). Because the categorical exclusion determination form, which contains a checklist of environmental issues, is simply a generic form, it is not necessary to require that the documentation of categorical exclusion be approved for public disclosure prior to holding a hearing on a project.

Additionally, one of the restrictions on classifying a project as a categorical exclusion is that the action may not involve substantial controversy (See §2.81(c)(2)(B)). For projects that trigger a public hearing, the project sponsor may intend to use the public's comments at the public hearing to gauge whether the project does or does not involve substantial controversy, in which case it may make sense to hold the hearing fairly early in the environmental review process, prior to completion and approval of all environmental reports (also called technical reports) analyzing specific environmental issues. To require the project sponsor to wait until all environmental reports have been completed and approved prior to holding the public hearing on a project proposed to be classified as a categorical exclusion could result in substantial delay if the project turns out to have substantial controversy and has to be re-done as an environmental assessment. Of course, any completed environmental reports that have been approved by the department delegate and therefore, are ready for public disclosure at the time of the hearing would have to be made available for public review not less than 15 days before the hearing as required by §2.107(d)(2).

Section 2.106 is amended to remove §2.106(d)(2), which specifies that a public hearing is not required if no hearing requests

are received by the deadline, or if the project sponsor has addressed all concerns of the persons requesting the public hearing. All the situations in which a hearing is or is not required are now covered in §2.107, Public Hearing.

Amendments to §2.107, Public Hearing, change some of the requirements for holding a public hearing on a transportation project. First, the amendments add a requirement to hold a hearing when an agency with jurisdiction over the project submits a written request for a hearing that is supported by reasons why a hearing will be helpful. This conforms the department's rules to the Council on Environmental Quality's rules at 50 C.F.R. §1506.6(c)(2). Second, the amendments remove the requirement to hold a public hearing when between one and nine individuals request a hearing in response to the department affording an opportunity for public hearing. It is not a judicious use of public resources to hold a hearing on a project that does not meet any of the other hearing triggers when only a relatively small number of individuals request one. In such an instance, it makes more sense to simply consider any comments the individuals might have in the course of finalizing the environmental review of the project. The section continues to require a public hearing when ten or more individuals request one. Third, amended §2.107 specifies that no hearing is required on the basis of requests made by an agency or members of the public if such request or requests are received after the deadline specified in an opportunity for public hearing issued under §2.106, or, as provided in existing §2.106(d)(2), if the project sponsor has addressed all concerns of the agency or persons requesting the hearing.

Section 2.107(b) is revised to remove the requirement to hold a hearing for a project that constructs a new highway on a new location. Because Transportation Code, §203.022 only requires notice and opportunity to comment be provided to adjoining landowners and affected local governments and public officials for new location highway projects, the department is re-implementing §203.022 under new rule, §2.104, Notice and Opportunity to Comment, and removing this trigger from §2.107.

Additionally, §2.107 is amended to add a new trigger for holding a public hearing for a project that "substantially changes the layout or function of a connecting roadway or an existing facility, including the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes." This trigger is added to implement Transportation Code, §203.023, which was recently enacted by the 85th Texas Legislature, and requires the department to, by rule, require a hearing for those projects. In the existing rules, a substantial change in layout or function is among the triggers for affording an opportunity for public hearing under §2.106. However, under newly enacted §203.023, this trigger will require an actual hearing, not just an opportunity for one. Newly enacted §203.023 also requires projects that add "managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes" to be treated as substantially changing the layout or function. Additionally, §2.107 is amended to include exceptions to the hearing requirement for certain types of actions relating to bicycle lanes. First, no hearing requirement will be triggered by the striping of bicycle lanes when the existing roadway already accommodated bicycles. For example, if a roadway has a wide curb lane or shoulder that already accommodates usage of the roadway by bicycles, and that roadway is merely being re-striped to have a dedicated bike lane for improved safety of bicyclists and motorized vehicles, then neither the layout nor function of the roadway is being substantially changed, and no public hearing is justified.

Second, no hearing requirement will be triggered by the striping of one or more non-continuous bicycle lanes approaching or through intersections, driveways, or other conflict areas. Some projects only add intermittent bicycle lanes to safely guide bicycle users through intersections, for example, but do not add continuous bicycle lanes along the entirety of the roadway corridor. These types of projects do not substantially change the layout or function of the roadway, and do not justify a public hearing.

Third, no hearing requirement will be triggered by the striping of bicycle lanes not along, but across a roadway at an intersection to allow the continuation of planned or existing bicycle lanes on crossing local streets or other bicycle facilities. Again, the department does not believe that the Legislature intended for such projects to require a public hearing, as they do not substantially change the layout or function of the roadway, but rather facilitate connectivity and safety on the local street network. These three exceptions are needed to avoid an interpretation that would require a public hearing, which is the department's highest and most formal form of public involvement event, for projects that involve the striping of bicycle lanes, but do not substantially change the layout or function of the roadway.

Section 2.107 is also amended to indicate that no hearing is required under §2.107 by the addition of bicycle lanes to a roadway if the project was addressed in a local hearing held under §25.55, Comment Solicitation on Bicycle Road Use. Section 25.55 requires each of the department's 25 districts to annually provide an opportunity for a public hearing on district transportation projects and programs that might affect bicycle use, and specifies particular requirements for noticing such opportunities and public hearings. If a project that adds bicycle lanes is addressed in a hearing held under §25.55, the department does not believe it would be consistent with Legislative intent for that same project to also trigger the requirement to hold a public hearing under §2.107 as part of the environmental review process merely because it involves the addition of bicycle lanes. If, beyond adding bicycle lanes, the project otherwise substantially changes the layout or function of the roadway or involves any of the other conditions for requiring a public hearing under §2.107, a hearing must be held under §2.107 as part of the environmental review process.

Section 2.107 is also revised for purposes of clarity to explain that, for mailed notices, notice will be considered to have been provided three days after the notice is mailed.

Finally, §2.107 is amended with new subsection (h), which clarifies that nothing in §2.107 limits the department's ability to hold one or more public meetings on any project under §2.105 (relating to Public Meeting). In other words, if a public hearing is required for a given project because it meets one of the triggers set forth in §2.107(b), such as a substantial change in layout or function, then of course the department must hold a public hearing on that project, but the department may, at its discretion, also hold one or more public meetings on that same project. Public meetings are useful for communicating with members of the public in a format that is less formal then a public hearing, and it is not uncommon for the department to hold one or more public meetings prior to holding the actual public hearing on a larger project.

Amendments to §2.108, Notice of Availability, remove the requirement to publish an notice of availability (NOA) for a record of decision in the *Texas Register* or the *Federal Register*, depending on whether the project is a state or FHWA transportation project. There is no requirement to publish this type of notice

for an FHWA project under either FHWA's or the Council on Environmental Quality's NEPA-implementing rules (23 C.F.R. Part 771 and 40 C.F.R. Chapter V, respectively). Further, it is the department's intent to, where practicable, combine the record of decision with the final environmental impact statement into a single document as allowed by §2.84(c)(2)(B). Notice of a final environmental impact statement will continue to be required to be published in the *Texas Register* or *Federal Register*, depending on whether the project is a state or FHWA transportation project. Because the final environmental impact statement will be combined with the record of decision, for most environmental impact statement-level projects, there will, in effect, be a notice of the combined final environmental impact statement/record of decision in the *Texas Register* or *Federal Register*, even without a separate requirement that the record of decision be noticed in the *Texas Register* or *Federal Register*.

Section 2.108 is also revised to require the project sponsor to "provide," rather than "send," an NOA. This is more appropriate as there are multiple means by which an NOA may be provided to the recipient. The section is also revised to eliminate the provision stating that email notice could be provided only when the entity had provided an email address to the department. If the department has a valid email address for a recipient, a notice may be provided using that email address regardless of whether it was specifically provided by the recipient to the department. Also, superfluous language regarding providing instructions on how to access the document electronically in an emailed notice is removed, as all notices of availability must provide instructions on how to access the document under subsection (a). The language about how no notice of availability is required when a full copy of the document is provided is also removed because this should be self-evident without a specific provision.

Section 2.108 is amended to revise the list of entities required to receive a notice of availability. The existing section requires that notices be sent to "entities identified as having an interest in or regulatory jurisdiction over an aspect of the project in accordance with §2.12, relating to Project Coordination." However, §2.12 is being repealed. Therefore, this language is being revised to require notices to be sent to affected units of federal, state, and local government; any entities that requested in writing to receive notices regarding the environmental review of the project; and any other entities with which environmental review of the project is being coordinated. The reference regarding affected units of federal, state, and local government is based on FHWA's requirement that these entities be notified of environmental assessments and FONSIs. (*See* 23 C.F.R. §§771.119(d) and 771.121(b).) Determination of which units of federal, state, and local governments are "affected" will be determined on a case-by-case basis taking into account the nature of the project and other factors deemed relevant by the department. The amendment also clarifies that, although all notices of availability must be sent to entities with which environmental review of the project is being coordinated, provision of notices to those entities with whom the department has a memorandum of understanding regarding environmental review will be governed by the memoranda, and not §2.108. This is because the specific memorandum with each resource agency specifies the negotiated requirements for notifying that resource agency.

Section 2.108 is amended to specify that for a notice of availability of a draft environmental assessment for which no public hearing is held, the notice must establish a deadline for accepting public comments of not less than 30 days after the date of newspaper publication. This is consistent with FHWA's rule at 23 C.F.R. §771.119(f).

Amendments to §2.109, Additional Notice and Comment for Projects Affected by Significant Changes, clarify that the requirements in this section are triggered by a project that "adds capacity." The existing rule refers to "the addition of one or more vehicular lanes to an existing highway." This language is problematic because it may be read as implying that an auxiliary lane, such as a passing lane or turn lane, would trigger the public involvement requirement. The department believes it is clearer, and more consistent with the Legislature's intent in enacting Transportation Code, §203.022, to simply state the trigger as "adds capacity," which is generally understood as not including the addition of passing lanes, turn lanes, or other types of auxiliary lanes.

Section 2.109 is revised to require provision of notice and opportunity to comment to adjacent landowners and affected local governments and public officials, rather than an opportunity for public hearing, when a qualifying project experiences certain types of significant changes following project approval. Notice and opportunity to comment is all that is required under the relevant statute, Transportation Code, §203.022(b). Providing an opportunity for public hearing in these situations is more process than the legislature intended, and could result in substantial project delays. The section also establishes a 15-day comment period, which is consistent with the department's approach with respect to public meetings and public hearings.

Amendments to §2.110, Notice of Availability, are similar to changes made in §2.109 to clarify that the requirements in this section are triggered by a project that "adds capacity." The existing section refers to "the addition of at least one travel lane." This language is problematic because it may be read as implying that an auxiliary lane, such as a passing lane or turn lane, would trigger the public involvement requirement. The department believes it is clearer, and more consistent with the Legislature's intent in enacting Transportation Code, §203.022, to simply state the trigger as "adds capacity," which is generally understood as not including the addition of passing lanes, turn lanes, or other types of auxiliary lanes.

SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

The amendments repeal §2.131, Advance Acquisition of Right-of-Way, as the department no longer believes it is necessary to have an environmental review-related rule regarding this subject. The department's environmental review rules are written primarily to implement Transportation Code, §201.604, requiring the department to have rules governing environmental review of the department's transportation projects. House Bill 2646, enacted by the 85th Texas Legislature in 2017, amended Transportation Code, §202.112 to provide express authority to acquire right-of-way before environmental clearance has been issued for the transportation facility. The department believes that its processes for acquiring right-of-way early are more appropriately set forth in the Right-of-Way Division's written policies than in the department's environmental review rules.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the amendments, repeals, and new rule as proposed are in effect, there will be a potential cost savings for the department and local government project sponsors of between approximately $200 and approximately

$11,400. This is based on assumptions that (1) the department and local governments could avoid the costs associated with publishing in the newspaper two NOIs per year, and (2) those notices would cost between approximately $100 and approximately $5,700 each. This does not take into account costs associated with publishing additional notices in languages other than English, which may be appropriate in certain circumstances. There will be no additional costs or impacts on revenue for the state or local governments as a result of this rulemaking.

Carlos Swonke, Director, Environmental Affairs Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments, repeals, and new rule.

PUBLIC BENEFIT AND COST

Mr. Swonke has also determined that for each year of the first five years in which the proposed amendments, repeals, and new rule are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be overall improvements to the department's environmental review process resulting from clearer and more streamlined rules. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Swonke has also considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed amendments, repeals, and new rule are in effect, there is no impact on the growth of state government.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The department determined that this rulemaking relates to actions subject to the Texas Coastal Management Program (CMP) under the Coastal Coordination Act of 1991, as amended (Natural Resources Code, §§33.201 et seq.), because it concerns the department's rules on the environmental review of transportation projects. The department reviewed this action for consistency with the CMP goals and policies provided in 31 TAC Chapter 501, Subchapter B. The department has determined that the action is consistent with applicable CMP goals and policies.

A CMP goal applicable to the department's activities is that transportation projects shall comply with certain practices concerning the siting of a project to lessen the impacts on coastal natural resources (see 31 TAC §501.31). The department's Chapter 2 rules concern the method by which to evaluate the environmental impacts of a transportation project, and do not dictate the siting of a project. However, §2.134, Coastal Management Program, specifies that approval of a transportation project located in whole or in part within the coastal boundary is an action subject to the Texas Coastal Management Program, and that such a project may not be approved if it is found to be inconsistent with the goals and policies of the CMP. The department's rules are consistent with CMP goals and policies by specifically incorporating them in this manner. Section 2.134 is not revised as part of this rulemaking.

A copy of this rulemaking will be submitted to the General Land Office for its comments on the consistency of the proposed rulemaking with the CMP. The department requests that the public also give comment on whether the proposed rulemaking is consistent with the CMP.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments, repeals, and new rule. The public hearing will be held at 1:30 p.m. on June 26, 2018 at 125 East 11th St., Austin, Texas, in the Ric Williamson Hearing Room on the first floor, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another.

SUBMITTAL OF COMMENTS

Written comments on this proposed rulemaking may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Environmental Review Rules." The deadline for receipt of comments is 5:00 p.m. on July 9, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, repeals, and new rule or is an employee of the department.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§2.5, 2.7. 2.14

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the

department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.5. Definitions.

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

(1) Affected local government--The governing body of a county or municipality in which a project is located.

(2) Best management practices--Practices that are determined to be the most efficient, practical, and cost effective measures to guide a particular activity or address a particular problem.

(3) Bicycle lane--A portion of a roadway that is designated by striping, signing, or pavement markings for the exclusive use of bicyclists.

(4) [~~(3)~~] CE (Categorical Exclusion)--Is covered by §2.81 of this chapter (relating to Categorical Exclusions).

(5) [~~(4)~~] Commission--The Texas Transportation Commission.

(6) [~~(5)~~] DEIS (Draft Environmental Impact Statement)--Is covered by §2.84 of this chapter (relating to Environmental Impact Statements).

(7) [~~(6)~~] Department--The Texas Department of Transportation.

(8) [~~(7)~~] Disposal plan--An operationally suitable method for the placement of dredged material that avoids or minimizes adverse environmental impacts.

(9) [~~(8)~~] District--One of the 25 geographical districts into which the department is divided.

(10) [~~(9)~~] Division--One of the department's divisions listed on the department's organizational chart.

(11) [~~(10)~~] EA (Environmental Assessment)--Is covered by §2.83 of this chapter (relating to Environmental Assessments).

(12) [~~(11)~~] EIS (Environmental Impact Statement)--Is covered by §2.84 of this chapter.

(13) [~~(12)~~] Environmental Affairs Division--The Environmental Affairs Division of the department.

(14) [~~(13)~~] Environmental report--A report, form, checklist, or other documentation analyzing an environmental issue in the context of a specific transportation project or presenting a thorough summary of an environmental study conducted in support of an environmental review document, or demonstrating compliance with a specific environmental requirement. The term does not include a permit or other approval outside the scope of the environmental review process. The term also does not include an environmental issues checklist prepared to demonstrate a CE determination or a checklist used to perform a reevaluation of a project.

(15) [~~(14)~~] Environmental review document--An environmental assessment, an environmental impact statement, a documented reevaluation, a supplemental environmental impact statement, or, for an FHWA transportation project, a document prepared to demonstrate that it qualifies as a categorical exclusion when FHWA requires a narrative document as opposed to a checklist. An environmental review document includes any attached environmental reports.

(16) [~~(15)~~] FEIS (Final Environmental Impact Statement)--Is covered by §2.84 of this chapter.

(17) [~~(16)~~] FHWA--The United States Department of Transportation Federal Highway Administration.

(18) [~~(17)~~] FHWA transportation project--A transportation project for which:

(A) FHWA's approval is required by law to comply with NEPA, FHWA is the lead federal agency, and FHWA agrees the department may act as the joint lead agency under 23 Code of Federal Regulations §771.109; or

(B) FHWA has assigned its environmental review responsibilities under NEPA or other federal environmental laws to the department pursuant to a memorandum of understanding.

(19) [~~(18)~~] FONSI (Finding of No Significant Impact)--Is covered by §2.83 of this chapter.

(20) [~~(19)~~] Highway project--A project that is:

(A) for the construction or maintenance of a highway or related improvement on the state highway system; or

(B) for the construction or maintenance of a highway or related improvement not on the state highway system but that is funded wholly or partly with federal money.

[~~(20) MAPO (Meeting with Affected Property Owners)--Is covered by §2.104 of this chapter (relating to Meeting with Affected Property Owners (MAPO)).~~]

(21) NEPA--The National Environmental Policy Act, codified at 42 United States Code §§4321, et seq.

(22) NOI (Notice of Intent)--Is covered by §2.102 of this chapter (relating to Notice of Intent (NOI)).

(23) ROD (Record of Decision)--Is covered by §2.84[~~2.84~~] of this chapter.

(24) SEIS (Supplemental Environmental Impact Statement)--Is covered by §2.86 of this chapter (relating to Supplemental Environmental Impact Statements).

(25) Significant--As used in reference to the significance of the impact of a project, has the meaning as that term is used and has been interpreted under NEPA and its related regulations, including 40 Code of Federal Regulations §1508.27.

(26) State highway system--The system of highways designated by the commission under Transportation Code, §203.002.

(27) State transportation project--A transportation project that is not subject to NEPA.

(28) Toll project--Has the meaning assigned by Transportation Code, §201.001.

(29) Transportation project--A project to construct, maintain or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing.

§2.7. Project Sponsor.

(a) Project sponsor required. Each transportation project must have a project sponsor that accepts responsibility for preparing the environmental review document or documentation of categorical exclusion, and performing related tasks.

(b) Project sponsor for projects developed by the department.

(1) For transportation projects developed by the department, the project sponsor will be the department district or division that is developing the project.

(2) A district or division, at its discretion, may allow a public entity that does not qualify as a project sponsor under subsection (c) of this section, a public entity that qualifies as a project sponsor under subsection (c) of this section but does not wish to be the official project sponsor, or a private entity to develop an environmental review document or documentation of categorical exclusion for the district's or division's use, but neither a public entity that does not qualify under subsection (c) of this section nor a private entity may be a project sponsor.

(c) Local government as project sponsor. A local governmental entity that is eligible under this subsection may be a project sponsor for a highway project under Subchapter C of this chapter (relating to Environmental Review Process for Highway Projects) if the department approves the notice submitted by the local government under §2.47 of this chapter (relating to Approval of Local Government as Project Sponsor). To be eligible, an entity must be a municipality; a county; a group of adjoining counties; a county acting under Transportation Code, Chapter 284; a regional tollway authority operating under Transportation Code, Chapter 366; a regional mobility authority operating under Transportation Code, Chapter 370; a local government corporation; or a transportation corporation created under Transportation Code, Chapter 431.

§2.14. Project File.

The project sponsor will, as directed by the department delegate, maintain the documentation showing work completed under this chapter in a project file. [~~The project sponsor may not disclose a draft of documentation of categorical exclusion or an environmental review document before public disclosure of the draft or document is approved by the department delegate or, for an FHWA transportation project, by FHWA.~~] If the project sponsor is a local government, prior to approval of the environmental review document or documentation of categorical exclusion, the local government will forward the project file to the department as directed by the department delegate.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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43 TAC §2.12

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.12. Project Coordination.

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

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SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

43 TAC §§2.43, 2.45, 2.49

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.43. Project Sponsor Responsibilities.

Unless the project sponsor and department delegate agree in the project scope to alternative roles and responsibilities in accordance with §2.44(d) of this subchapter (relating to Project Scope), the project sponsor for a highway project is responsible for:

(1) preparing the project scope, in collaboration with the department delegate, in accordance with §2.44 of this subchapter;

(2) preparing any environmental reports identified in the project scope that support an environmental review document or documentation of categorical exclusion, and performing all related studies and surveys identified in the project scope;

(3) preparing the environmental review document or documentation of categorical exclusion in accordance with Subchapter D of this chapter (relating to Requirements for Classes of Projects);

(4) preparing all materials for and obtaining or implementing all required permits and commitments;

(5) preparing necessary materials for any required coordination and, if both the department and the entity with whom coordination is being conducted agree, conducting the coordination; [~~, and, to the extent possible based on the actions of the agencies with which coordination is required, performing the activities required under §2.12 of this chapter (relating to Project Coordination);~~]

(6) preparing all materials for and conducting all required and appropriate public participation in accordance with Subchapter E of this chapter (relating to Public Participation); and

(7) arranging, paying for, and performing all mitigation of project impacts undertaken in accordance with §2.13 of this chapter (relating to Mitigation).

§2.45. Optional Early Submittal of Environmental Reports.

(a) Submittal. The project sponsor may submit to the department delegate any environmental reports as they are developed in the course of preparing an environmental review document. [~~Nothing in this subchapter requires the preparation of environmental reports for the department's review.~~]

(b) Review. The department delegate will review an environmental report submitted under this section and inform the project sponsor in writing of any deficiencies, flaws, or omissions within 60 days of receipt of the environmental report. The project sponsor and department delegate may agree to extend this deadline.

§2.49. Technical Review.

(a) Environmental issues checklist. For categorically excluded projects for which an environmental issues checklist is prepared, the department delegate will begin a technical review of the documentation of categorical exclusion when it is received from the project sponsor, or in the case of an electronic checklist, when the project sponsor indicates that the checklist is ready for review. The project sponsor shall ensure that all tasks and coordination required prior to making the environmental decision are complete when the documentation or electronic checklist is submitted for technical review.

(b) Environmental review document. The department delegate will begin a technical review of a draft EA, FEIS, documented reevaluation, or a CE for which a narrative document, rather than a checklist, is prepared when the department delegate determines that it is administratively complete under §2.48 of this subchapter (relating to Administrative Completeness Review). The department delegate will begin a technical review of a DEIS when it is received from the project sponsor.

(c) Purpose. The purpose of a technical review is for the department delegate to confirm that:

(1) for a categorically excluded project for which an environmental issues checklist is prepared, the documentation provided by the project sponsor shows that the project qualifies as a categorically excluded project, as applicable; or

(2) for all other projects, the environmental review document prepared by the project sponsor is:

(A) an evaluation of all required subject areas;

(B) written in a professional and understandable manner;

(C) based on sound reasoning and accepted scientific and engineering principles; and

(D) compliant with all applicable regulatory requirements [~~legally sufficient, including satisfying~~] including the requirements of Subchapter D of this chapter (relating to Requirements for Classes of Projects).

(d) Disapproval. The department delegate may conclude that the environmental review document or documentation of categorical exclusion cannot be approved because it does not meet the requirements of this section. The department delegate will provide the project sponsor with a written explanation for its disapproval of an environmental review document or documentation of categorical exclusion.

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

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SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

43 TAC §§2.81, 2.83 - 2.85

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.81. Categorical Exclusions.

(a) Applicability.

(1) This section applies to a transportation project that is classified by the department delegate as a CE. A CE is a category of actions that have been found to have no significant effect on the environment, individually or cumulatively.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (e) of this section applies only if the project is an FHWA transportation project.

(3) This section does not apply to the purchase of an option to acquire real property, or to the exercise of an option or other early and advance acquisition of land. [~~The required environmental review for those types of transactions is specified in §2.131 of this chapter (relating to Advance Acquisition of Right-of-Way).~~]

(b) Approval for classification as CE.

(1) If the project sponsor satisfies the requirements of this subsection the department delegate may approve the classification of a transportation project as a CE.

(2) Except as provided in paragraph (4) of this subsection [~~subsection (4) below~~], the project sponsor will submit to the department delegate [~~documentation that is~~] an environmental issues checklist, prepared electronically in the department's environmental database, showing compliance with the section. [~~The checklist may be prepared electronically in the department's environmental database. A categorical exclusion determination in the form of a checklist is not~~] The checklist does not constitute an environmental review document. [~~However, if required by the FHWA for an FHWA transportation project, the project sponsor must submit, instead of a checklist,~~] FHWA may require an environmental review document for one of its projects, in which case the project sponsor must submit to the department delegate a brief environmental review document discussing and analyzing the potential environmental impacts. If the department delegate determines that a transportation project qualifies as a CE, it will document that determination in the project file.

(3) The environmental issues checklist must show that the project does not violate the restrictions in subsection (c) of this section and that significant environmental impacts will not result based on the results of an evaluation of the project. [~~The project sponsor must indicate if coordination is required, and if so, the portion of coordination that can be completed before final approval of the environmental review document has been completed.~~]

(4) The department's environmental affairs division may direct that certain types of projects meeting specified criteria be processed as CEs, without preparation of individual environmental issues checklists, by recording verification that the project meets the specified criteria.

(c) Restrictions on classification.

(1) A CE project directly, indirectly, or cumulatively, may not:

(A) induce significant impacts to planned growth or land use for the area;

(B) cause any significant environmental impacts to any natural, cultural, recreational, historic, or other resource;

(C) cause any significant impacts to air, noise, or water quality;

(D) relocate significant numbers of people; or

(E) cause significant impacts on travel patterns.

(2) The CE action may not involve unusual circumstances such as [~~or lead to~~]:

(A) significant environmental impacts;

(B) substantial controversy on environmental grounds; or

(C) inconsistencies with federal or state law.

(d) Categories of projects. For a state transportation project or an FHWA transportation project, the categories of projects listed at 23 C.F.R. §771.117(c) and (d) normally will qualify as categorical exclusions, unless unusual circumstances make the project ineligible for designation as a categorical exclusion under subsection (c) of this section. The categories of projects listed at 23 C.F.R. §771.117(c) and (d) are not the only types of projects that may qualify as categorical exclusions.

(e) FHWA transportation projects.

(1) For an FHWA transportation project, in addition to subsections (a) - (d) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as a CE.

(2) If federal law, including FHWA's rules, or a programmatic agreement conflicts with this chapter, the federal law or programmatic agreement provision controls to the extent of the conflict.

§2.83. Environmental Assessments.

(a) Applicability.

(1) This section applies to a transportation project that the department delegate has not classified as a categorical exclusion and that does not clearly require the preparation of an EIS, or if the department delegate believes an EA would assist in determining the need for an EIS.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (i) of this section applies only if the project is an FHWA transportation project.

(b) Purpose and content.

(1) An EA describes the purpose and need for the project, any alternatives considered, any mitigation measures that are to be incorporated into the project, and the extent of environmental impact, including direct, indirect, and cumulative impacts. The project sponsor will investigate environmental impacts and prepare an EA to determine the nature and extent of environmental impacts, and to provide full disclosure of project impacts to the public.

(2) If, taking into account any mitigation measures or commitments documented in the EA, the EA shows that the environmental impacts are not significant, the EA will conclude with a FONSI. If, taking into account any mitigation measures or commitments documented in the EA, the EA shows that the impacts are significant, the EA will conclude that an EIS is required.

(c) Coordination. The project sponsor will coordinate with any governmental entities that have indicated interest in the project to advise them of basic project information and will take into consideration such an entity's input regarding social, economic, or environmental impacts, alternatives and measures that might mitigate adverse envi-

ronmental impacts, and other environmental review and consultation requirements that should be performed concurrently with the EA. As provided in §2.43 of this chapter (relating to Project Sponsor Responsibilities), the project sponsor will conduct any required coordination only if both the department and the entity with whom coordination is being conducted agree. The project sponsor [~~comply with §2.12 of this chapter (relating to Project Coordination), and~~] will include in the EA the results of coordination.

(d) Public participation. The project sponsor will conduct appropriate public participation in accordance with Subchapter E of this chapter (relating to public participation) and will include in the EA a summary of the results of public participation and the comments received. If changes resulting from public participation are minimal, the project sponsor may incorporate the results into the EA by appending errata sheets, rather than revising the EA as a whole.

(e) Organization of EA. To the maximum extent possible, an EA should summarize and incorporate by reference any separately prepared environmental reports supporting the EA's conclusions. If these reports are not included as appendices, the reports must be available for public inspection on request.

(f) Circulation of draft EA. [~~The project sponsor may not disclose a draft of an EA before public disclosure of the EA is approved by the department delegate or, for an FHWA transportation project, by FHWA.~~] The project sponsor will comply with §2.108 of this chapter (relating to Notice of Availability).

(g) Change in determination of impact. If the department delegate, taking into account any mitigation measures or commitments documented in the EA, determines at any point prior to the issuance of a FONSI that the project may have a significant impact on social, economic, or environmental concerns, the department delegate will direct the project sponsor to prepare an EIS.

(h) Preparation of FONSI.

(1) Finding of no significant impact (FONSI) means a document that is issued by the department delegate that briefly concludes that, [~~presents the reasons why,~~] taking into account any mitigation measures or commitments documented in the EA, the transportation project will not have a significant effect on the human environment and, therefore, for which an environmental impact statement will not be prepared. To describe the impacts of the project, and to identify any mitigation measures or commitments that factor into the determination that impacts are not significant, a FONSI will reference the EA and any other environmental documents related to the FONSI rather than repeating the information contained in those documents within the body of the FONSI.

(2) The department delegate will review the EA, any proposed mitigation measures, the results of project coordination, and if a public hearing was held, the documentation of public hearing required by §2.107 of this chapter (relating to Public Hearing). The department delegate, if appropriate, will present the decision in a written FONSI.

(3) The project sponsor will give notice of availability of a FONSI in accordance with §2.108 of this chapter.

(i) FHWA transportation project. For an FHWA transportation project, in addition to the requirements of subsections (a) - (h) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as an EA. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of the technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

§2.84. Environmental Impact Statements.

(a) Applicability.

(1) This section applies to a transportation project if there are likely to be significant environmental impacts [~~or if the project is of a type for which an EIS is typically prepared~~]. The project sponsor will prepare an EIS that is a detailed public disclosure document that evaluates the impacts of the project.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (g) of this section applies only if the project is an FHWA transportation project.

(b) Content.

(1) An EIS must include:

(A) a discussion of the purpose and need for the project;

(B) an evaluation of all reasonable alternatives satisfying the purpose and need, their associated social, economic, and environmental impacts, an evaluation of alternatives eliminated from detailed study, and a determination of the preferred alternative;

(C) a summary of studies conducted to determine the nature and extent of environmental impacts;

(D) a description of the environmental impact of the project, any unavoidable adverse environmental impacts and associated measures to minimize harm, and any irreversible and irretrievable commitments of resources involved if the project is implemented;

(E) a description of the direct, indirect, and cumulative effects of the project; and

(F) a discussion of compliance with all applicable laws or reasonable assurances that the requirements can be met, and a description of the mitigation measures that are to be incorporated into the project.

(2) Coordination. The project sponsor will [~~comply with §2.12 of this chapter (relating to Project Coordination), and will~~] include in the EIS the results of coordination conducted before final approval of the EIS.

(3) Public participation. The project sponsor will conduct appropriate public participation in accordance with Subchapter E of this chapter (relating to Public Participation) and will include in the EIS the results of public participation and the comments received.

(4) Organization. To the maximum extent possible, an EIS should summarize, incorporate by reference and include as appendices any separately prepared environmental reports supporting the EIS's conclusions, rather than repeat the detailed information from environmental reports in the body of the EIS.

(c) Processing the EIS.

(1) The project sponsor will in the following order:

(A) publish a notice of intent under §2.102 of this chapter (relating to Notice of Intent (NOI)) and develop a coordination plan under §2.103 of this chapter (relating to Coordination Plan for EIS);

(B) conduct public participation and, subject to agreement by both the department and the entity with whom coordination is being conducted, coordination in the manner and at the times prescribed by law;

(C) prepare the draft EIS (DEIS);

(D) issue the notice of availability of the DEIS;

(E) conduct the public hearing;

(F) prepare the final EIS (FEIS);

(G) issue the notice of availability of the FEIS; and

(H) prepare the record of decision (ROD).

(2) Accelerated Decision-making.

(A) If public comments are minor, and changes are limited to factual corrections or explanations of why comments do not warrant additional agency response, the project sponsor may prepare errata sheets and attach them to the DEIS, rather than preparing the FEIS. When errata sheets are attached to the DEIS in lieu of a separately prepared FEIS, all other applicable requirements for completing the EIS set forth in subsection (e) of this section apply.

(B) The project sponsor may prepare the FEIS and ROD as a single document unless:

(i) the FEIS makes substantial changes to the proposed project that are relevant to environmental or safety concerns; or

(ii) there are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the impacts of the proposed action.

(3) The project sponsor will prepare a supplemental DEIS, a supplemental FEIS, or both if required by §2.86 of this subchapter (relating to Supplemental Environmental Impact Statements).

(d) Preparation of DEIS.

(1) The project sponsor will prepare a DEIS that meets the requirements of subsection (b) of this section. A preferred alternative may be designated, if appropriate. The preferred alternative may be developed to a higher level of detail than other alternatives. The higher level detail must be limited to work necessary for preliminary design, as described by paragraph (5) of this subsection. The department delegate will review, and will approve the development of the preferred alternative to a higher level of detail if appropriate, and only if that development does not prevent the department from making an impartial decision as to whether to accept another alternative under consideration in the environmental review process.

(2) The DEIS is subject to the department delegate's approval before it is made available to the public as a department document. For highway projects processed under Subchapter C of this chapter (relating to Environmental Review Process for Highway Projects), the DEIS is approved for public review on the department delegate's completing the technical review of the DEIS under §2.49 of this chapter (relating to Technical Review).

(3) After the department delegate approves the DEIS, the project sponsor will circulate the DEIS and give notice of its availability in accordance with §2.108 of this chapter (relating to Notice of Availability).

(4) After the DEIS is circulated, public hearing held, and comments reviewed, the project sponsor will prepare an FEIS, or a supplemental DEIS if required.

(5) For the purposes of paragraph (1) of this subsection, preliminary design defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental investigations, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design.

(e) Preparation of FEIS.

(1) The project sponsor will prepare an FEIS that meets the requirements of subsection (b) of this section and will prepare a public hearing record under §2.107 of this chapter (relating to Public Hearing). The FEIS may consist of the DEIS and attached errata sheets, if appropriate.

(2) After the department delegate approves the FEIS, the project sponsor will circulate the FEIS and issue notice of its availability in accordance with §2.108 of this chapter.

(f) Preparation of ROD.

(1) The department delegate will issue a ROD that:

(A) presents the basis for the department's decision;

(B) identifies all alternatives considered;

(C) specifies the alternative or alternatives that were considered to be environmentally preferable;

(D) states whether all practical means to avoid or minimize environmental harm have been adopted, and if practical means were not adopted, why they were not adopted; and

(E) summarizes mitigation measures.

(2) If the FEIS and ROD are prepared as a single document, the document will indicate on the cover of the document that it is both the FEIS and ROD, and the department delegate's approval of that document represents approval of both the FEIS and ROD.

(3) If the FEIS and ROD are not prepared as a single document, the department delegate will complete and sign the ROD not earlier than the 30th day after the date that the notice of the availability of the FEIS is published in the Texas Register or Federal Register, and the department delegate will separately issue notice of the availability of the ROD in accordance with §2.108 of this chapter.

(4) Until the ROD is signed, neither the department nor any local government project sponsor may take any action concerning the project that would have an adverse environmental impact or limit the choice of reasonable alternatives.

(5) If after a ROD is issued for a project the department approves an alternative that was not identified as the preferred alternative, the department delegate will prepare a revised ROD and will publish notice of the availability of the revised ROD in accordance with §2.108 of this chapter.

(g) FHWA transportation project. For an FHWA transportation project, in addition to subsections (a) - (f)[~~(a)~~ - ~~(g)~~] of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as an EIS. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

§2.85. Reevaluations.

(a) Applicability.

(1) This section applies to a transportation project that is classified by the department delegate as a CE, EA, or EIS.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (c)[~~(d)~~] of this section applies only if the project is an FHWA transportation project.

(b) Purpose and content.

(1) A documented reevaluation of a DEIS, which may be in the form of a checklist, will be prepared by the project sponsor in cooperation with the department delegate if an acceptable FEIS is not submitted to the department delegate within three years after the date that the DEIS is circulated. The purpose of this reevaluation is to determine whether or not a supplement to the DEIS or a new DEIS is needed.

(2) A documented reevaluation of a FEIS, which may be in the form of a checklist, will be required before further approvals may be granted if major steps to advance the project, such as authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates, have not occurred within three years after the date of the approval of the FEIS, FEIS supplement, or the last major department approval or grant.

(3) A consultation reevaluation will be required after approval of a ROD, FONSI, or CE designation if changed circumstances could affect the continued validity of the ROD, FONSI, or CE designation. When a consultation reevaluation is required, the project sponsor will consult with the department delegate before requesting any major approvals or grants from the department to establish whether or not the approved environmental document or CE designation remains valid for the project. The project sponsor will record the consultation reevaluation in the project file. If, as a result of consultation, the department delegate determines that a documented reevaluation is appropriate, the project sponsor shall prepare a documented reevaluation, which may be in the form of a checklist.

[(c) Coordination. The department delegate may require the project sponsor to carry out coordination under §2.12 of this chapter (relating to Project Coordination).]

(c) [(d)] FHWA transportation project. For an FHWA transportation project, in addition to subsections (a) and (b) [(a) - (c)] of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the reevaluation. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

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

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SUBCHAPTER E. PUBLIC PARTICIPATION

43 TAC §§2.101 - 2.110

STATUTORY AUTHORITY

The amendments and new rule are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.101. General Requirements.

(a) Guidelines. The department will publish guidelines that identify a selection of outreach methods that project sponsors may choose in collaboration with the department delegate to inform the public and maximize participation in the public involvement process. Outreach methods may include posting information on a website, publishing a [an additional] notice in the newspaper, or use of changeable message signs.

(b) Notification to interested parties. Each project sponsor shall maintain a list of elected public officials, individuals, and affected interest groups that have expressed an interest in a transportation project. The project sponsor will provide notification to these individuals and groups of any public participation opportunities related to the project, apart from a Notice and Opportunity to Comment [Meeting with Affected Property Owners].

(c) Minimum Requirements. This subchapter establishes the minimum requirements for public participation for a project.

(d) FHWA Transportation Projects. For an FHWA transportation project, in addition to the public participation requirements set forth in this subchapter, the project sponsor will comply with any additional public participation or coordination requirements that may apply under Federal law, such as the requirements at 23 U.S.C. §139, 23 U.S.C §128 and 40 C.F.R. Part 1500. To the extent there is a conflict between this subchapter and an applicable Federal law, the Federal law will prevail.

(e) Limited English Proficiency. The project sponsor, in consultation with the department delegate, will determine whether any notice required by this chapter must be provided [published] in a language, in addition to English, to comply with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP).

(f) Joint Public Participation. The department may collaborate with local governments, metropolitan planning organizations, or other transportation entities to conduct joint public participation activities. Public participation hosted by other entities may satisfy department public participation requirements provided the requirements established in this subchapter are met.

§2.102. Notice of Intent (NOI)

(a) Purpose. An NOI formally initiates the process for preparing an EIS or a supplemental EIS.

(b) Notice of Intent Required. The project sponsor will prepare an NOI before the preparation of an EIS or supplemental EIS. An NOI must be prepared according to guidelines and procedures established by the department. The department delegate will review the NOI and submit it for publication in the Texas Register if the project is a state transportation project or in the Federal Register if the project is an FHWA transportation project.

~~[(c) Notice Requirements. The project sponsor will publish the approved NOI in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish the NOI in any newspaper having general circulation in the area affected by the project.]~~

§2.103. Coordination Plan for EIS.

(a) Purpose. A coordination plan is a plan for coordinating public and agency participation in and comment on the environmental review process when an EIS is required. A coordination plan is intended to involve the agencies with an interest in the project and the public in the early stages of development of an EIS, and is distinct from the process for preparation of the project scope prepared by a project sponsor and department delegate under §2.44 of this chapter (relating to Project Scope). A coordination plan must include, at a minimum, participation by any agency for which participation is required under a memorandum of understanding with the department, including the memoranda of understanding under Subchapters G, H, and I of this chapter (relating to Memorandum of Understanding with the Texas Parks and Wildlife Department, Memorandum of Understanding with the Texas Historical Commission, and Memorandum of Understanding with the Texas Commission on Environmental Quality).

(b) Coordination Plan Required. The project sponsor, in collaboration with the department delegate, will prepare a coordination plan after publication of the NOI for an EIS or supplemental EIS, in accordance with guidelines and procedures established by the department.

(c) Notice Requirements.

(1) The project sponsor will circulate the draft of the coordination plan to the agencies identified in the coordination plan and will make it available to the public at a public meeting. The project sponsor will allow not less than 30 days for comment on the draft coordination plan and schedule.

(2) A deadline for comment by agencies and the public may be extended for good cause. The good cause must be documented in the project file.

(3) The project sponsor will give a copy of the approved coordination plan and any approved schedule for completion of the environmental review process to the agencies identified in the coordination plan and will make it available to the public on request.

§2.104. Notice and Opportunity to Comment.

(a) Applicability. Subject to the exception in subsection (b) of this section, this section applies to any project that would:

(1) require the acquisition of new right-of-way;

(2) add capacity; or

(3) involve the construction of a highway at a new location.

(b) Exception. This section does not apply to a project for which a public meeting is held under §2.105 of this subchapter (relating to Public Meeting), an opportunity for public hearing is afforded under §2.106 of this subchapter (relating to Opportunity for Public Hearing), or a public hearing is held under §2.107 of this subchapter (relating to Public Hearing), provided that notice of the meeting, opportunity for public hearing, or public hearing is provided to the entities specified in subsections (c) and (d) of this section.

(c) Notice and opportunity to comment for property owners. Prior to the environmental decision on a project subject to this section, the project sponsor will provide written notice to the owner or owners of real property that would be acquired for the project and, for a project described by subsection (a)(2) or (3) of this section, the owner or owners of real property that is adjacent to the project. The purpose of this notice is to inform the real property owner or owners of the project and allow them an opportunity to submit comments on the project prior to the environmental decision.

(d) Notice and opportunity to comment for local governments. Prior to the environmental decision on a project described by subsection (a)(2) or (3), the project sponsor will provide written notice to affected local governments and public officials. The purpose of this notice is to inform the affected local governments and public officials of the project and allow them an opportunity to submit comments on the project prior to the environmental decision.

(e) Comment deadline. The notice required by subsections (c) and (d) of this section will specify a comment deadline of not sooner than 15 days after the date that the notice is made. If the notice is sent by United States mail, the minimum comment period begins on the third day after the date that the notice is mailed.

(f) Documentation requirements. The project sponsor will maintain records of all notices provided and written comments received.

§2.105. Public Meeting.

(a) Purpose. Public meetings are intended to gather input from the public and keep the public informed during the development of a project.

(b) When to hold a Public Meeting.

(1) A project sponsor may hold one or more public meetings for any project. The decision to hold a public meeting should be based on the project's type, complexity, and level of public concern.

(2) The project sponsor shall hold a public meeting during the drafting of a DEIS to present the draft coordination plan.

(c) Notice Requirements. The project sponsor may select one or more appropriate outreach methods to inform the public of a public meeting. Outreach methods will be appropriate for the anticipated audience to maximize attendance. At a minimum, notice of the meeting will be provided to any public official, individual, or affected interest group that has expressed interest in the relevant transportation project.

(d) Documentation Requirements. After a public meeting, the project sponsor will assemble documentation of the public meeting. The public meeting documentation will be forwarded to the department delegate for review and maintained in the project file.

§2.106. Opportunity for Public Hearing.

(a) Purpose. An opportunity for a public hearing permits the public to request a public hearing for a project when the project sponsor is not otherwise obligated to hold a public hearing under §2.107 of this subchapter (relating to Public Hearing).

(b) When to afford an opportunity for public hearing.

(1) The project sponsor will afford an opportunity for a public hearing for a project if:

(A) the project requires the acquisition of significant amounts of right-of-way;

(B) [the project substantially changes the layout or function of connecting roadways or of the facility being improved;]

[(C) the project adds through-lane capacity, not including auxiliary lanes or other lanes less than one mile in length;]

[(D)] the project has a substantial adverse impact on abutting real property; or

(C) [(E)] the project is the subject of an environmental assessment.

(2) A project sponsor is not required to comply with this section if the project sponsor holds a public hearing for the project under §2.107 of this subchapter [(relating to Public Hearing)].

(c) Notice Requirements.

(1) The project sponsor will publish, at a minimum, one notice of the opportunity to request a public hearing in a local newspaper having general circulation. [The notice shall be published before the 30th day before the deadline for submission of written requests for holding a public hearing.] If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project.

(2) In addition, the project sponsor will select a minimum of one additional outreach method to inform the public of an opportunity to request a public hearing.

(3) The project sponsor will provide [mail] notice of the opportunity to request a public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.

(4) The project sponsor will provide notice of the opportunity to request a public hearing to any public official, individual, or affected interest group that has expressed interest in the relevant transportation project.

(5) Notice of an opportunity for public hearing will be provided under this section at least 15 days prior to the deadline for requesting a public hearing. If the notice is sent by United States mail, the notice is considered to be provided on the third day after the date of mailing.

(d) Procedural Requirements.

[(1)] The project sponsor will provide notice of the opportunity after preliminary location and design studies are developed and, if an environmental review document is being prepared, after the environmental review document [or documentation of categorical exclusion] is approved for public disclosure by the department delegate.

[(2) A public hearing is not required under this section if, at the end of the time set for affording an opportunity to request a public hearing, no requests have been received or the project sponsor has addressed all concerns of the persons requesting the public hearing.]

(e) Documentation Requirements. If, after providing an opportunity for a public hearing under this section, the project sponsor does not hold a public hearing, the project sponsor will submit to the department delegate an original certification of the public participation process containing a statement that the requirements of this section have been met.

§2.107. Public Hearing.

(a) Purpose. A public hearing is held to present project alternatives and to encourage and solicit public comment.

(b) When to hold a public hearing. A project sponsor will hold a public hearing if:

(1) an agency with jurisdiction over the project submits a written request for a hearing that is supported by reasons why a hearing will be helpful, or [a request for hearing is received under §2.106 of this subchapter (relating to Opportunity for Public Hearing);]

[(2)] ten or more individuals submit a written request for a hearing, except that a public hearing is not required under this paragraph if:

(A) a public hearing has been held concerning the project before the request or requests are received;

(B) [or if] the hearing request or requests are received after the environmental review document or documentation of categorical exclusion for the project is approved;

(C) the hearing request or requests are received after the deadline specified in a notice issued under §2.106 of this subchapter (relating to Opportunity for Public Hearing); or

(D) the project sponsor has addressed all concerns of the agency or persons requesting the public hearing;

(2) [(3)] the department delegate determines it is in the public interest; or

(3) [(4)] the project is:

(A) a project with substantial public interest or controversy;

(B) an EIS project; or

(C) subject to subsection (c) of this section, a project that substantially changes the layout or function of a connecting roadway or an existing facility, including but not limited to the addition of managed lanes, high-occupancy vehicle lanes, bicycle lanes, bus lanes, and transit lanes [a project that constructs a new highway on a new location].

(c) Exceptions for certain types of actions relating to bicycle lanes.

(1) For purposes of subsection (b)(3)(C) of this section, none of the following actions are considered to substantially change the layout or function of a connecting roadway or an existing facility:

(A) striping bicycle lanes when the pre-existing roadway already accommodated bicycles;

(B) striping one or more non-continuous bicycle lanes approaching or through intersections, driveways, or other conflict areas; or

(C) striping bicycle lanes not along, but across a roadway at an intersection to allow the continuation of planned or existing bicycle lanes on crossing local streets or other bicycle facilities.

(2) Notwithstanding subsection (b) of this section, a hearing is not required under this section by the addition of bicycle lanes to a roadway if the project was addressed in a local hearing held under §25.55 of this title (relating to Comment Solicitation on Bicycle Road Use).

(d) [(c)] Notice requirements.

(1) At a minimum, the project sponsor will publish[, before the 15th day before the day of a public hearing,] one notice of the hearing in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having

general circulation in the area affected by the project. For a project that constructs a reliever route, notice must also be published in a newspaper of general circulation in the bypassed area.

(2) In addition to the other notice required by this subsection, the project sponsor will select a minimum of one additional outreach method to inform the public of the public hearing.

(3) The project sponsor will provide [~~mail~~] notice of the public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.

(4) The project sponsor will provide notice of the public hearing to any public official, individual, or affected interest group that has expressed interest in the relevant transportation project.

(5) Notice of public hearing will be provided under this section at least 15 days prior to the date of the public hearing. If the notice is sent by United States mail, the notice is considered to be provided on the third day after the date of mailing.

(e) [~~(d)~~] Procedural requirements.

(1) The hearing will be held after preliminary location and design studies are developed and, if an environmental review document is being prepared, after the environmental review document [~~or documentation of categorical exclusion~~] is approved for public disclosure by the department delegate.

(2) The project sponsor will make the maps, drawings, environmental reports, and documents concerning the project available to the public for not less than the 15 consecutive days before the date of the public hearing.

(3) The project sponsor shall establish a deadline for accepting public comments of not less than 15 days after the date of the public hearing.

(f) [~~(e)~~] Documentation requirements.

(1) After a public hearing, the project sponsor will assemble documentation of the public hearing. The public hearing documentation will be forwarded to the department delegate for review and maintained in the project file.

(2) For a public hearing regarding an EIS, the project sponsor will document the number of positive, negative, and neutral public comments received in accordance with Transportation Code, §201.811(b). This information must be presented to the commission in an open meeting and reported on the department's website in a timely manner.

(g) [~~(f)~~] Role of department staff. One or more department employees must begin a public hearing by making opening remarks to the audience of attendees. Additionally, one or more department employees must be physically present during any portion of a public hearing.

(h) No effect on public meetings. Nothing in this section limits the department's ability to hold one or more public meetings on any project under §2.105 of this subchapter (relating to Public Meeting).

§2.108. Notice of Availability.

(a) Purpose. A notice of availability is issued to inform the public or recipient of when certain important documents are available for review, and how to obtain copies of those documents.

(b) When to issue notice. A notice of availability is required for:

(1) a draft EA;

(2) a FONSI;

(3) a DEIS;

(4) a FEIS; or

(5) a ROD.

(c) Notice requirements.

(1) The project sponsor will provide [~~send~~] copies of all notices of availability to the appropriate metropolitan planning organization; any other affected units of federal, state, and local government; any entities that requested in writing to receive notices regarding the environmental review of the project; and any other entities with which environmental review of the project is being coordinated, except that if the project is being coordinated under a memorandum of understanding, the terms of the memorandum of understanding govern the provision of notice rather than this subsection. [~~and entities identified as having an interest in or regulatory jurisdiction over an aspect of the project in accordance with §2.12, relating to Project Coordination. The copy of a notice with instructions on how to access the document electronically, may be provided by e-mail if the recipient has provided the department with an e-mail address. If the entity will receive a full copy of the document, it is not necessary to also send a notice of availability.~~]

(2) The project sponsor, in collaboration with the department delegate, will publish a notice of availability on the department website regarding a FONSI, DEIS, FEIS, ROD, or draft EA.

(3) The project sponsor, in collaboration with the department delegate, will publish in a local newspaper having general circulation in the area affected by the project a notice of availability regarding a draft EA for which no public hearing is held or an FEIS. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project. For a notice of availability regarding a draft EA for which no public hearing is held, the notice must establish a deadline for accepting public comments of not less than 30 days after the date of newspaper publication.

(4) The department delegate also must submit for publication a notice of availability regarding a DEIS[~~,~~] or FEIS [~~or ROD~~] in the Texas Register if the project is a state transportation project or in the Federal Register if the project is an FHWA transportation project. For an NOA for a DEIS published in the Texas Register or Federal Register, the NOA shall establish a period of not fewer than 45 days and no more than 60 days for the return of comments on the DEIS.

(5) If the FEIS and ROD will be a single document, the notice of availability regarding the FEIS should indicate that fact.

§2.109. Additional Notice and Comment [~~Public Participation~~] for Projects Affected by Significant Changes.

(a) Purpose. This section describes when additional notice and opportunity to comment must be provided to owners of adjoining property, and affected local governments and public officials, [~~additional public participation is required~~] following project approval.

(b) When to provide additional notice and opportunity to comment [~~conduct additional public participation~~]. Under Transportation Code, §203.022(b), the project sponsor will provide an additional notice and opportunity to comment [~~opportunity for public participation in the form of an opportunity for public hearing~~] for a project that has received project approval if:

(1) the project adds capacity or involves [~~the addition of one or more vehicular lanes to an existing highway, or to~~] the construction of a highway at a new location; and

(2) conditions relating to land use, traffic volumes, and traffic patterns have changed significantly since the project was originally subject to public review and comment.

(c) Comment deadline. The notice required by subsection (b) will specify a comment deadline of no sooner than 15 days after the date that such notice is provided. If the notice is sent by United States mail, the minimum comment period begins on the third day after the date that the notice is mailed.

(d) Documentation requirements. The project sponsor will maintain records of all notices made and written comments received. [~~Notice and documentation requirements. An opportunity for public hearing under this section will conform to the same notice and documentation requirements for an opportunity under §2.106 of this subchapter (relating to Opportunity for Public Hearing).~~]

§2.110. Notice of Impending Construction.

(a) Purpose. A notice of impending construction informs individuals affected by certain projects that construction will begin.

(b) Notice Requirements under Transportation Code, §203.022(c). For a project that adds capacity or involves the [~~either the addition of at least one travel lane or~~] construction of a highway at [~~on~~] a new location, the project sponsor must provide owners of adjoining property and affected local governments and public officials with notice of impending construction by any means approved by the department's Environmental Affairs Division. The means of providing notice may include a sign or signs posted in the right-of-way, mailed notice, printed notice distributed by hand, or notice via website when the recipient has previously been informed of the relevant website address. The notice must be provided after a CE determination or issuance of a FONSI or ROD for the project, but before earthmoving or other activities requiring the use of heavy equipment begin.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 463-8630

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43 TAC §2.104

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.104. Meeting with Affected Property Owners (MAPO).

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

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SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

43 TAC §2.131

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects; and Transportation Code, §203.023, which requires the department to by rule require a hearing for certain types of projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 201.101, 201.6035, 201.604, 201.607, 203.022, 203.023, 202.112, and Chapter 201, Subchapter I-1.

§2.131. Advance Acquisition of Right-of-Way.

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

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §9.2, Contract Claim Procedure, §9.12, Qualification of Bidders, §9.13, Notice of Letting and Issuance of Bid Forms, §9.15, Acceptance, Rejection, and Reading of Bids, and §9.17, Award of Contract; and new §9.22, Liquidated Damages, §9.23, Evaluation and Monitoring of Contract Performance, §9.24, Performance Review Committee and Actions, §9.25, Appeal of Remedial Action, and §9.26, Inclusion of Contract Remedies in Contracts. The department also proposes the repeal of §§9.101 - 9.115, concerning Highway Improvement Contract Sanctions.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTION

The changes to the department's highway improvement contract rules implement new legislation, improve efficiency, and better reflect current practice.

Senate Bill No. 1877, 85th Legislature, Regular Session, 2017, removed the requirement for notice of proposed contracts by mail, allowing the department to send the notice electronically.

Senate Bill No. 312, 85th Legislature, Regular Session, 2017, amended Transportation Code, §223.012, adding new requirements to better manage the quality, safety, and timeliness of highway improvement contracts. Among other things, Senate Bill 312 requires the department to adopt rules to: (1) establish a range of contract remedies to be included in all low-bid highway improvement contracts; (2) develop and implement a schedule for liquidated damages that accurately reflects the costs associated with project completion delays; (3) develop a contractor performance evaluation process. The rule amendments and new rules: (1) include criteria for identifying projects that have a significant impact on the traveling public; (2) require the department to calculate project-specific liquidated damages for projects that reflect the true cost of travel delays; (3) provide for a process for contractors to appeal the contractor's evaluation; (4) include criteria for the use of the evaluations by the department to address contractor performance problems; (5) provide consideration of sufficient time to complete the project; and (6) allow the consideration of events outside a contractor's control before taking action against the contractor.

The amendments also formalize current department policies and clarify and simplify the rules to streamline the processes.

Amendments to §9.2, Contract Claim Procedures, provide more flexibility to the executive director when appointing members to the contracts claims committee and to more clearly establish when a contractor waives its right to file a claim. The reference in subsection (i) to Chapter 9, Subchapter G is deleted because that subchapter is being repealed in this rulemaking.

Amendments to §9.12, Qualification of Bidders, reorganizes the section to flow more logically, adopts new procedures to use contractor evaluations detailed in §9.23 when establishing contractor bid capacity, and allows the appeal of the department's establishment of affiliation.

Amendments to §9.13, Notice of Letting and Issuance of Bid Forms, implement electronic distribution of the notice of proposed contracts, and reflect amendments to §§9.12, 9.23, and 9.24 that affect the notices of letting and bid forms.

Amendments to §9.15, Acceptance, Rejection, and Reading of Bids, revise the reference to §9.12 in subsection (b)(3). The revision is necessary because the subsections of §9.12 are redesignated in this rulemaking.

Amendments to §9.17, Award of Contract, delete the provision that states that, in certain circumstances, the lowest bidder on a contract may be subject to debarment under §9.101, et seq. of this chapter, because §9.101, et seq. are repealed by this rulemaking.

New §9.22, Liquidated Damages, provides that the department will develop a schedule for liquidated damages that accurately reflects the costs, including administrative costs to the department on all projects and road user costs on significant projects, that result from delays in the completion of a project. It also provides relevant factors that must be considered to determine when a project is to be considered significant. These changes are required under Transportation Code, §223.012(a)(2) and (c).

New §9.23, Evaluation and Monitoring of Contract Performance, provides that the department will develop standards used to evaluate a contractor's performance and an evaluation form to be used by department employees in evaluating contract performance. Further, it provides that the relevant district engineer or the director of the support services division will perform and document interim and final evaluations of contractor performance. Interim evaluations will be performed annually or as necessary and will be used to establish a project recovery plan if contractor performance fails to meet department requirements. The project's final evaluation will be used to determine whether the contractor's project performance meets the department's requirements. Final evaluations will be forwarded to the division of the department that is responsible for monitoring the contract for regular review. If the average of the final evaluations reviewed is below the department's acceptable standards for contract performance, the division will send a notice to the contractor and request that the contractor submit a proposed portfolio corrective action plan to the division for approval. If at the end of a 120-day period contract performance remains below the department's standards for contract performance, the division will notify the contractor and forward its documentation to the Performance Review Committee to take action as necessary. These changes are required under Transportation Code, §223.012(a)(3), (e)(2), and (f).

New §9.24, Performance Review Committee and Actions, establishes a committee, appointed by the deputy executive director, that reviews the information provided by the department and the contractor, and can recommend one or more of the following actions for the deputy executive director's decision: (1) take no action;(2) reduce the contractor's bidding capacity; (3) prohibit the contractor from bidding on one or more projects; (4) immediately suspend the contractor from bidding for a specified period of time; or (5) prohibit the contractor from being awarded a contract on which they are the apparent low bidder. Additionally, the committee may recommend immediate action to ensure project quality, safety, or timeliness if: (1) the contractor failed to execute a highway improvement contract after a bid is awarded,

unless the contractor honored the bid guaranty submitted under §9.14; (2) the Texas Transportation Commission (commission), during the preceding 36-month period, rejected two or more bids by the contractor because of contractor error; (3) the department declared the contractor in default on a highway improvement contract; or (4) a district notifies the committee through the referring division that a contractor has failed to comply with an established project recovery plan. Finally, if any conduct that poses ethical concerns is discovered, the committee will immediately provide that information to the department's compliance division. These changes are required under Transportation Code, §223.012(a)(1).

New §9.25, Appeal of Remedial Action, provides for an appeal to the executive director if an action is taken under §9.24 is disputed. These changes are required under Transportation Code, §223.012(e)(1).

New §9.26, Inclusion of Contract Remedies in Contracts, requires each highway improvement contract to provide notice to the contractor of the evaluation of contract performance under §9.23 and the range of contract remedies applicable for substandard performance under the contract.

Chapter 9, Subchapter G, which consists of §§9.101 - 9.115, concerning Highway Improvement Contract Sanctions, is repealed. The repeal effectively ends the imposition of sanctions for a contractor's failure to meet the department's performance standards. Instead, contractor performance will be evaluated under new §9.23, Evaluation and Monitoring of Contract Performance, and if the evaluations indicate that the contractor's performance is below department standards, the department may take corrective action under §9.23 or under new §9.24, Performance Review Committee and Actions. On the other hand, a contractor's violation of the department's ethical standards may result in sanctions under Chapter 10, Ethical Conduct by Entities Doing Business with the Department.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Ms. Gina E. Gallegos, P.E., Director of Construction Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Ms. Gallegos has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improved highway construction contract management, including contractor performance issues, and higher quality, safety and timeliness standards on department projects at little to no cost to the department. There are no anticipated economic costs for persons required to comply with the proposed rules.

There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefor, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Gallegos has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§9.2, 9.12, 9.13, 9.15, and 9.17, new §§9.22 - 9.26, and the repeal of §§9.101 - 9.115 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Sunset Contractor Performance Rules." The deadline for receipt of comments is 5:00 p.m. on July 9, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER A. GENERAL

43 TAC §9.2

STATUTORY AUTHORITY

The proposed amendments will be adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §223.012, which requires the commission to adopt rules relating to contractor performance.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.003 and §223.012.

§9.2. Contract Claim Procedure.

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) The claim is under a contract entered into and administered by the department, acting in its own capacity or as an agent of a local government, under one of the following statutes:

(A) Transportation Code, §22.018 (concerning the designation of the department as agent in contracting and supervising for aviation projects);

(B) Transportation Code, §391.091 (concerning erection and maintenance of specific information logo, major area shopping guide, and major agricultural interest signs);

(C) Transportation Code, Chapter 223 (concerning bids and contracts for highway improvement projects), subject to the provisions of subsection (c) of this section; or

(D) Government Code, Chapter 2254, Subchapters A and B (concerning professional or consulting services).

(2) The claim is for compensation, or for a time extension, or any other remedy.

(3) The claim is brought by a prime contractor.

(b) Pass-through claim; claim and counter claim.

(1) A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(2) Only a prime contractor may submit a claim to begin a claim proceeding under this section. After a claim proceeding has begun the department may make a counter claim.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(c) Claim concerning comprehensive development agreement or certain design-build contracts. A claim under a comprehensive development agreement (CDA) entered into under Transportation Code, Chapter 223, Subchapter E, or under a design-build contract, as defined in §9.6 of this subchapter (relating to Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts), may be processed under this section if the parties agree to do so in the CDA or design-build contract, or if the CDA or design-build contract does not specify otherwise. However, if the CDA or design-build contract specifies that a claim procedure authorized by §9.6 of this subchapter applies, then any claim arising under the CDA or design-build contract shall be processed and resolved in accordance with the claim procedure authorized by §9.6 of this subchapter and not by this section.

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise, except that when used in subsection (c) of this section, the terms claim, comprehensive development agreement, CDA, and design-build contract shall have the meanings given such terms stated in §9.6 of this subchapter.

(1) Claim--A claim for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the contract.

(2) Commission--The Texas Transportation Commission.

(3) Committee--The Contract Claim Committee.

(4) Department--The Texas Department of Transportation.

(5) Department office--The department district, division, or office responsible for the administration of the contract.

(6) Department office director--The chief administrative officer of the responsible department office; the officer shall be a district engineer, division director, or office director.

(7) District--One of the 25 districts of the department.

(8) Executive director--The executive director of the Texas Department of Transportation.

(9) Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(10) Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) Contract claim committee. The executive director or the director's designee shall name the members and chairman of a committee or committees to serve at the executive director's or designee's pleasure. The chairman may add members to the committee, including one or more district engineers who will be assigned to the committee on a rotating basis, with a preference, if possible, for district engineers of districts that do not have a current contractual relationship with the prime contractor involved in a contract claim.

(f) Negotiated resolution. To every extent possible, disputes between a prime contractor and the department's project engineer should be resolved during the course of the contract.

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a prime contractor shall file a claim under the procedure in this subsection. A claim filed by the prime contractor must be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The prime contractor shall file a claim after completion of the contract or when required for orderly performance of the contract. For a claim resulting from the enforcement of a warranty, a prime contractor shall file the claim no later than one year after expiration of the warranty period. For all other types of claims, a prime contractor shall file the claim no later than one year after the earlier of the date that the department sends to the contractor notice [~~following~~]:

(i) [~~the department issues notice to the contractor~~] that the contractor [~~it~~] is in default;

(ii) that [~~, or~~] the department terminates the contract; or

(iii) [~~(ii)~~] notice of [~~the department issues~~] final acceptance of the project that is the subject of the contract.

(B) To file a claim, a prime contractor shall file a contract claim request and a detailed report that provides the basis for the claim. The detailed report shall include relevant facts of the claim, cost or other data supporting the claim, a description of any additional compensation requested, and documents supporting the claim. The prime contractor shall file the claim with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) A claim filed by a prime contractor shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) A defective certification shall not deprive the department of jurisdiction over the claim. Prior to the entry by the department of a final decision on the claim the department shall require a defective certification to be corrected.

(E) The construction division or department engineer shall forward the contract claim request and detailed report to the committee.

(F) The deadline for the department to file a counter claim is 45 days before the committee holds an informal meeting under paragraph (3) of this subsection.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee. The committee shall give the prime contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

(C) The committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters

and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. Proceedings before the committee are an attempt to mutually resolve a claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a claim are part of the attempt to mutually resolve a claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chairman shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the prime contractor does not object to the committee's decision, the prime contractor shall file a written statement with the committee's chairman stating that the prime contractor does not object. The prime contractor shall file the statement no later than 20 days after receipt of the committee's decision. The chairman shall then prepare a document showing the settlement of the claim including, when required, payment to the prime contractor, and the prime contractor's release of all claims under the contract. The prime contractor shall sign it. The executive director may approve the settlement, or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(ii) If the prime contractor objects to the committee's decision the prime contractor shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the prime contractor fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the prime contractor waives his right to a contested case hearing. All further litigation of claims on the project or contract by the prime contractor shall be barred by the doctrines of issue and claim preclusion. The chairman shall then prepare an order implementing the resolution of the claim under the committee's decision, and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim. If contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(4) Decision after contested case hearing. This paragraph applies if a contested case hearing has been held on a claim. The administrative law judge's proposal for decision shall be submitted to the executive director for adoption. The executive director may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative law judge. The executive director shall provide a written statement containing the reason and legal basis for any change.

(5) This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(h) Claim forfeiture. A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment, or allowance thereof. In such cases the department shall specifically find such fraud or attempt and render judgment of forfeiture. This subsection applies only if there is clear and convincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.

(i) Relation of contract claim proceeding and sanction proceeding.

(1) Except as provided in paragraphs (2) and (3) of this subsection, the processing of a contract claim under this section is a separate proceeding [~~and shall not affect the executive director's assessment of a contract sanction under Subchapter G of this chapter (relating to Contractor Sanctions)~~].

(2) If a contested issue arises that is relevant both to a contract claim proceeding and a sanction proceeding concerning the same contract, the issue shall be resolved in the proceeding that the executive director refers first for a contested case hearing under Chapter 1, Subchapter E of this title (relating to Procedures in Contested Cases). If the issue is decided in the first proceeding that decision shall apply to and be binding in all subsequent department proceedings.

(3) This paragraph applies to a contract under which the parties agreed to submit questions which may arise to the decision of a department engineer. If a dispute under the contract leads to a contract claim proceeding or sanction proceeding, the engineer's decision shall be upheld unless it was based on fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest judgment.

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

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Joanne Wright
Deputy General Counsel
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SUBCHAPTER B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §§9.12, 9.13, 9.15, 9.17, 9.22 - 9.26

STATUTORY AUTHORITY

The amendments and proposed new rules will be adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code, §223.012, which requires the commission to adopt rules relating to contractor performance.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.003 and §223.012.

§9.12. Qualification of Bidders.

(a) Eligibility. To be eligible to bid on department contracts, potential bidders must satisfy the requirements listed in this section.

All potential bidders must complete a Confidential Questionnaire or a Bidders Questionnaire.

(1) If the department has accepted from a contractor a properly completed Confidential Questionnaire, as described in subsection (c) of this section, and audited financial information, as described in subsection (b)(1) of this section, the contractor is eligible to bid on any project for which the contractor meets any necessary special technical qualification requirements, has sufficient available bidding capacity, and has submitted a properly completed a Certification of Eligibility Status form if it is a federal-aid project.

(2) A contractor that has submitted only a Bidders Questionnaire, as described in subsection (d) of this section, may bid only on a specified project for which the department has waived the requirements of paragraph (1) of this subsection. Such a project is referred to as a waived project and generally has one of the following characteristics:

(A) the engineer's estimate for the project is $300,000 or less;

(B) the project is a routine maintenance project;

(C) the project is an emergency project; or

(D) the project contains specialty items not normal to the department's roadway projects program.

(b) Financial Information. This section refers to three types of financial information.

(1) Audited financial information is information resulting from an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial information in conformity with generally accepted accounting principles. A bidder that submits audited financial information, as required for a Confidential Questionnaire in accordance with subsection (c) of this section, is eligible to bid on all projects for which the bidder has available bidding capacity, as determined under subsection (e) of this section.

(2) Reviewed financial information may be used in a Bidders Questionnaire under subsection (d) of this section. The scope of reviewed financial information is substantially less than audited financial information, and the information is the result primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the independent accountant, which means that the independent accountant is not aware of any material modifications that should be made in order for the financial information to conform to generally accepted accounting principles. A bidder that submits reviewed financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(3) Compiled financial information also may be used in a Bidders Questionnaire under subsection (d) of this section. Compiled financial information only presents information that is the representation of management. No opinion or other assurance is expressed by the independent accountant. A bidder that submits compiled financial information is subject to the limitations described in subsections (d) and (e) of this section for a waived project.

(c) Confidential Questionnaire. A [~~Unless waived under subsection (c) of this section, a~~] potential bidder must satisfy the requirements of this subsection [~~be prequalified in accordance with this section~~] to be eligible to bid on a construction or maintenance contract, except as provided by subsection (d) of this section.

(1) A potential bidder must:

(A) submit a Confidential Questionnaire to the department's Construction Division in Austin 10 days prior to the last day of bid opening, in a form prescribed by the department, which shall include certain information concerning the bidder's equipment and experience as well as financial condition;

(B) have a [~~its~~] certified public accountant firm that is licensed to practice public accountancy in this state prepare [~~submit~~] the audited and any other financial information required by the department [~~current edition of the department's Bulletin Number 2, titled "Accounting Procedures in Determination of Contractor's Financial Resources"~~];

(C) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(D) [~~for the purpose of bidding on federal-aid projects,~~] properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire for the purpose of bidding on federal-aid projects.

(2) [~~The department will make its examination and determination under this subsection based on the information submitted, and will advise the potential bidder of its approved bidding capacity.~~] Information adverse to the potential bidder contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids [~~on federal-aid projects~~].

(3) Satisfactory audited financial information will grant a 12-month period of qualification from the date of the financial statement.

(4) A three month grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted prior to the expiration date of the financial statement.

(5) The department may require current audited information at any time if circumstances develop which are factors that could alter the firm's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(d) [~~(c)~~] Bidders Questionnaire. [~~The department may waive audited financial qualification requirements as provided by this subsection.~~]

[~~(1) The department will waive the qualification requirements of subsection (b) of this section if:~~]

[~~(A) the engineer's estimate is $300,000 or less;~~]

[~~(B) the project is a maintenance project; or~~]

[~~(C) the project pertains to specialty items not normal to the department's roadway projects program.~~]

[~~(2) A waiver will not be given under paragraph (1) of this subsection if the executive director determines that audited financial qualification should be required due to:~~]

[~~(A) safety considerations;~~]

[~~(B) the complexity of the work; or~~]

[~~(C) the potential impact of the work on adjacent property owners.~~]

[~~(3)~~] To be eligible to bid on a contract under this subsection [~~for which the audited financial qualification requirements have been waived under this subsection,~~] or on a contract to be awarded under §9.19 of this subchapter, a bidder must:

(1) [~~(A)~~] submit a Bidders Questionnaire [~~bidder's questionnaire~~] to the department's headquarters office in Austin 10 days prior to the date the bid opens, in a form prescribed by the department, which includes certain information concerning a bidder's equipment and experience;

(2) [~~(B)~~] submit unaudited and other data as required in the instructions to the Bidders Questionnaire [~~bidder's questionnaire~~];

(3) [~~(C)~~] satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(4) [~~(D)~~] for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the Bidders Questionnaire [~~bidder's questionnaire~~]. Information adverse to the potential bidder contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in the bidder being declared ineligible to submit bids on a federal-aid project.

(e) [~~(4)~~]Bidding capacity. The department will make its examination and determination [~~under this subsection~~] based on the information submitted under subsection (c) or (d) of this section, as appropriate, and advise the bidder of its approved bidding capacity.

(1) For a bidder submitting a Confidential Questionnaire and audited financial information, the amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based on the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. If this calculation results in a positive amount that is not greater than $1,000,000, the bidder will receive a bidding capacity of $1,000,000 if the bidder has positive net working capital and the bidder provides documentation of at least two years' experience and four completed projects in the field in which the bidder wishes to bid. Bidding capacity determined under this paragraph applies for any project and is not limited to waived projects.

(2) [~~(A)~~]For a [~~A~~] bidder submitting a Bidder's Questionnaire with no prior experience in construction or maintenance, or a negative working capital position (i.e., financial statements indicate that current liabilities exceed current assets), will receive a bidding capacity of $300,000 for waived projects only.

(3) [~~(B)~~]For [~~An experienced bidder with sufficient working capital and financial capability, as determined by the department, will receive a bidding capacity of:~~]

[~~(i)~~] [~~$500,000 for~~] a bidder submitting a Bidders Questionnaire and compiled financial information if the principals of the bidder have at least one year experience in construction or maintenance and have satisfactorily completed at least two projects in these fields, the bidding capacity is $500,000 for waived projects only.[~~;~~]

(4) [~~(ii)~~]For [~~$1,000,000 for~~] a bidder submitting a Bidders Questionnaire and compiled financial information and [~~if~~] the principals of which [~~the bidder~~] have at least two years experience in construction or maintenance and have satisfactorily completed at least four projects in these fields, the bidding capacity is $1,000,000 for waived projects only. Those contractors possessing more than two years experience will be granted an additional $250,000 in bidding capacity for each additional year of experience in construction or maintenance, with a maximum bidding capacity of $3,000,000 for waived projects only.[~~; and~~]

(5) [~~(iii)~~]For [~~over $1,000,000 for~~] a bidder submitting a Bidders Questionnaire and reviewed financial information and [~~if~~] the principals of which [~~the bidder~~] have at least three years of experience in construction or maintenance and have satisfactorily completed at least six projects in these fields, the [~~. The~~] amount of the bidding capacity will be determined by multiplying the net working capital by a factor determined by the department based upon the expected dollar volume of projects to be awarded and the number of bidders prequalified by the department. In the event that this calculation does not result in an amount greater than $1,000,000, the bidder will receive a bidding capacity of $1,000,000. Bidding capacity determined under this paragraph is limited to waived projects only.

(f) Effect of contract performance. A firm's bidding capacity or eligibility to bid on a highway improvement contract may be affected by a decision of the deputy executive director under §9.24 of this chapter (relating to Performance Review Committee and Actions).

(g) [~~(d)~~] Affiliated entities. In making examinations and determinations under this section, the department will make a determination of bidder affiliations. Bidders the department determines are affiliated are not eligible to submit bids for the same project. A bidder that is determined to be affiliated but that can establish independence from the other affiliated bidders [~~solely because of a family relationship~~] may request, in accordance with this subsection, an exception to its ineligibility.

(1) For purposes of this subchapter:

(A) two or more bidders [~~firms~~] are affiliated if:

(i) the bidders [~~firms~~] share common officers, directors, or controlling stockholders;

(ii) a family member of an officer, director, or controlling stockholder of one bidder [~~firm~~] serves in a similar capacity in another of the bidder [~~firms~~];

(iii) an individual who has an interest in, or controls a part of, one bidder [~~firm~~] either directly or indirectly also has an interest in, or controls a part of, another of the bidders [~~firms~~];

(iv) the bidders [~~firms~~] are so closely connected or associated that one of the bidders [~~firms~~], either directly or indirectly, controls or has the power to control another bidder [~~firm~~];

(v) one bidder [~~firm~~] controls or has the power to control another of the bidders [~~firms~~]; or

(vi) the bidders [~~firms~~] are closely allied through an established course of dealings, including but not limited to the lending of financial assistance; and

(B) a family member of an individual is the individual's parent, parent's spouse, step-parent, step-parent's spouse, sibling, sibling's spouse, spouse, child, child's spouse, spouse's child, spouse's child's spouse, grandchild, grandparent, uncle, uncle's spouse, aunt, aunt's spouse, first cousin, or first cousin's spouse.

(2) To request the exception to the department's finding of affiliation, a bidder must submit to the executive director a written request explaining the basis for the exception accompanied by supporting evidence, including an affidavit affirming that the bidder is independent from and not coordinating with the affiliates or any other bidder. The written request must be received not later than the 30th day before the date of the bid opening for which the exception is requested.

(3) The department will review the request and supporting evidence provided to determine the affiliation or independence of the potential bidders. The department will consider, in addition to other affiliation criteria:

(A) transactions between the potential bidders; and

(B) the extent to which the potential bidders share:

(i) equipment;

(ii) personnel;

(iii) office space; and

(iv) finances.

(4) If the department finds that the bidders are independent, the director of the division reviewing the request will recommend to the executive director that the requesting bidder be granted an exception. [The department will not grant an exception if the bidders affiliated by a family relationship are not independent.]

(5) The executive director will review the request, supporting evidence, and department's recommendation [finding] and will make the final determination on the request. The executive director will send to the bidder the final written determination. An exception granted to the bidder remains in effect for future bid openings unless the exception is revoked under paragraph (6) of this subsection.

(6) The granting of an exception under this subsection does not remove the classification of the bidders as affiliated. The department reserves the right to conduct follow-up reviews and revoke the exception if the follow-up reviews indicate that the bidders are no longer independent. A bidder's failure to act independently of its affiliates or other bidder during the period it was granted an exception under this subsection may result in the imposition of sanctions.

(7) If bidders classified as affiliates submit bids on the same project, the department reserves the right to reject all bids on that project and relet the contract.

(8) Affiliated bidders that are granted an exception under this subsection and that have been sanctioned in accordance with Chapter 10 of this title [Subchapter G of this chapter] must meet the exception criteria in that chapter [Subchapter G] to be eligible to bid.

(h) [(e)] Building contracts. To be eligible to bid on a building contract, a potential bidder must satisfactorily comply with any financial, experience, technical, or other requirements contained in the governing specifications applicable to the project.

[(f) Financial statements. For purposes of this section, an audited financial statement involves an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements in conformity with generally accepted accounting principles. A reviewed financial statement is substantially less in scope than an audited financial statement, and consists primarily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the auditor, meaning the auditor is not aware of any material modifications that should be made in order for the financial statements to conform to generally accepted accounting principles. A compiled financial statement is limited to presenting in the form of financial statements information that is the representation of management. No opinion or any other form of assurance is expressed on the statements by the auditor.]

§9.13. Notice of Letting and Issuance of Bid Forms.

(a) Notice to Contractors [bidders]. A person may apply to have his or her name placed on a [mailing] list to receive the Notice to Contractors electronically [for a fee of $65 per year to cover costs of mailing the notices].

(b) Application for notice [Fee exemption]. The following entities will receive the Notice to Contractors [are not required to pay the notice subscription fee]:

(1) qualified bidders approved under §9.12 of this subchapter (relating to Qualification of Bidders);

(2) [other state agencies;]

[(3) other state departments of transportation;]

[(4)] disadvantaged business enterprises and historically underutilized businesses;

[(5)] [offices of the federal government;] and

(3) [(6)] organizations performing work under supportive service contracts awarded by the commission.

(c) Notice of Bids. The department will advertise contracts on the Electronic State Business Daily maintained and operated by the Comptroller of Public Accounts.

(d) Bid form.

(1) Bid form content. A bid form may include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request. A request for a bid form on a highway improvement contract should [may] be made using the department's electronic system. On the request of a contractor, the department may enter a form request into the system on behalf of the contractor. [orally or in writing].

(e) Issuance of bid form.

(1) Construction and maintenance contracts.

(A) Issuance. Except where prohibited under subparagraph (B) of this paragraph, the department will, upon receipt of a request, issue a bid form for a construction or maintenance contract only to a bidder who qualifies under §9.12(c) or (d) of this subchapter, as appropriate, [as follows:]

[(i)] [for a project on which audited financial prequalification is not waived, only to a prequalified bidder,] and only if the estimated cost of the project is within that bidder's available bidding capacity[; and]

[(ii) for a project on which audited financial qualification is waived under §9.12(c) of this subchapter, only if the estimated cost of the project is within that bidder's available bidding capacity].

(B) Non-issuance. Except as provided in subparagraph (C) of this paragraph, the department will not issue a bid form requested by a bidder for a construction or maintenance contract if at the time of the request the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project;

(ii) is suspended or debarred by order of the commission;

(iii) is prohibited from rebidding a specific project because of default of the first awarded contract;

(iv) has not fulfilled the requirements for qualification under §9.12 of this subchapter;

(v) is prohibited, or an affiliate of the bidder is prohibited, from rebidding that project as a result of having previously submitted a bid that led to the department re-letting the project [~~mathematically and materially unbalanced bid resulting in the rejection of the bid by the commission~~]; or

(vi) is prohibited from participating in the contract because of a decision of the Deputy Executive Director under §9.24 of this chapter (relating to Performance Review Committee and Actions). [~~rebidding that project as a result of having submitted a bid containing an error resulting in the rejection of bids by the commission; or~~]

~~*(vii)* is prohibited from rebidding that project under §9.18(b) of this subchapter (relating to Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements).~~]

(C) Exceptions [~~Exception~~]. The department may issue a bid form:

(i) under a temporary approval to a bidder who would be ineligible under subparagraph (B)(iv) of this paragraph if the bidder has substantially complied with the requirements of §9.12 of this subchapter; or

(ii) to a bidder who would be ineligible under subparagraph (B)(v) of this paragraph if the bidder holds an exception to ineligibility granted under §9.12(g) of this subchapter.

(2) Building contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph, the department will issue, upon request, a bid form to a bidder having complied with §9.12(h) [~~§9.12(e)~~] of this subchapter.

(B) Non-issuance. The department will not issue a bid form requested by a bidder for a building contract if, at the time of the request, the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;

(ii) is suspended or debarred by order of the commission; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

(3) All contracts. The department will not issue a bid form for a highway improvement contract to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.15. Acceptance, Rejection, and Reading of Bids.

(a) Public reading. Bids will be opened and read in accordance with Transportation Code, §223.004 and §223.005. Bids for contracts with an engineer's estimate of less than $300,000 may be filed with the district engineer at the headquarters for the district, and opened and read at a public meeting conducted by the district engineer, or his or her designee on behalf of the commission.

(b) Bids not read.

(1) The department will not accept and will not read a bid if:

(A) the bid is submitted by an unqualified bidder;

(B) the bid is in a form other than the official bid form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the bid was not in the hands of the letting official at the time and location specified in the advertisement;

(E) the bidder modifies the bid in a manner that alters the conditions or requirements for work as stated in the bid;

(F) the bid guaranty, when required, does not comply with §9.14(d) of this subchapter;

(G) the bidder did not attend a specified mandatory pre-bid conference;

(H) the bid does not include a fully completed HUB plan in accordance with §9.356 of this chapter when required;

(I) a computer printout bid, when used, does not have the unit bid prices entered in designated spaces, is not signed in the name of the firm or firms to whom the bid was issued, or omits required bid items or includes items not shown in the bid;

(J) the bidder was not authorized to be issued a bid form under §9.13(e) of this subchapter;

(K) the bid did not otherwise conform with the requirements of §9.14 of this subchapter;

(L) the bidder fails to properly acknowledge receipt of all addenda;

(M) the bid submitted has the incorrect number of bid items; or

(N) the bidder bids more than the maximum or less than the minimum number of allowable working days shown on the plans when working days is a bid item.

(2) If bids are submitted on the same project separately by a joint venture and one or more members of that joint venture, the department will not accept and will not read any of the bids submitted by the joint venture and those members for that project.

(3) If bids are submitted on the same project by affiliated bidders as determined under §9.12(g) [~~§9.12(d)~~] of this subchapter, the department will not accept and will not read any of the bids submitted by the affiliated bidders for that project.

(c) Revision of bid.

(1) For a manually submitted bid, a bidder may change a bid price before it is submitted to the department by changing the price in the printed bid form and initialing the revision in ink;

(2) For a manually submitted bid, a bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone or telegraph, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(3) For an electronically submitted bid, a bidder may change a unit bid price in EBS and resubmit electronically to the electronic vault until the time specified for the close of the receipt of bids. Each bid submitted will be retained in the electronic vault. The electronic bid with the latest date and time stamp by the vault will be used for bid tabulation purposes.

(d) Withdrawal of bid.

(1) A bidder may withdraw a manually submitted bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone or telegraph requests, but will accept a properly signed facsimile request. Except as provided in §9.16(c) of this subchapter and §9.17(d) of this subchapter, a bidder may not withdraw a bid subsequent to the time for the receipt of bids.

(2) A bidder may withdraw an electronically submitted bid by submitting an electronic or written request to withdraw the bid. An electronic withdrawal request must be submitted using EBS. The request, whether electronic or written, must be submitted by a person who is authorized by the bidder to submit the request and received by the department before the time and date of the bid opening.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation, the department will presume the same retainage percentage for all bidders. In the event that the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced, the bidder will not be considered in future bids for the same project.

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance, Rejection, and Reading of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(5) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), (f), or (i) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than $300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract. The lowest bidder may be considered in default [~~and will be subject to debarment under §9.101, et seq. of this chapter~~].

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than $300,000 may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a)-(c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. In such an instance, the bid guaranty will be returned to the bidder. No compensation will be paid to the bidder as a result of this cancellation.

(i) If, for a contract with a DBE goal, the lowest bidder fails to submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within five calendar days after the date that the bids are opened, the commission may:

(1) reject all bids; or

(2) reject the bid of the lowest bidder and award the contract to the next lowest bidder.

(j) If a contract is to be awarded to the next lowest bidder under subsection (i) of this section, the next lowest bidder shall submit the DBE information required by §9.227 of this subchapter within one calendar day after the date of receipt of the notification of bid acceptance.

§9.22. Liquidated Damages.

(a) In accordance with Transportation Code, §223.012, the department will develop a schedule for liquidated damages that accurately reflects the costs, including administrative costs to the department and road user costs, that result from delays in the completion of a project resulting from a breach of a highway improvement contract. The department will review the schedule from time to time and revise it as necessary to insure that it continues to accurately compensate for the costs resulting from a breach.

(b) For each highway improvement contract for a project that the department identifies as having a significant impact on the traveling public, the department will determine project-specific liquidated damages that accurately reflect the costs, including administrative costs to the department and road user costs, that result from delays in the completion of a project resulting from a breach of a highway improvement contract. In determining whether a project has significant impact on the traveling public, the department, in addition to other relevant factors, will consider whether the project will:

(1) involve an interstate highway, hurricane evacuation route, or hazardous material route;

(2) affect access to schools or hospitals

(3) affect a corridor of regional, statewide, or national importance;

(4) affect the response times of emergency vehicles;

(5) affect a primary thoroughfare in a community;

(6) require long term ramp closures for controlled access roadways;

(7) result in significant added travel time or distance;

(8) result in added travel time for the traveling public on or around a major national or state holiday; or

(9) have a substantial impact on local businesses.

§9.23. Evaluation and Monitoring of Contract Performance.

(a) The department will develop standards used to evaluate a contractor's performance under a highway improvement contract, including standards for conformance with the project plans and specifications and recordkeeping requirements; compliance with the contract and industry standards for safety; responsiveness in dealing with the department and the public; meeting progress benchmarks and project milestones; addressing project schedule issues, given adjustments, change orders, and unforeseen conditions or circumstances; and completing project on time. The department will develop an evaluation form to be used by department employees in evaluating contract performance.

(b) The district engineer of the district in which a project under a highway construction or maintenance contract is located, or the Director of the Support Services Division for building contracts shall evaluate the contractor's performance under the contract. An interim evaluation shall be performed as necessary and on each anniversary date of the contract if the project extends for longer than one year. The district engineer for construction or maintenance contracts or the Chief Administrative Officer for building contracts shall approve any final evaluations on the completion of the project. Only final evaluations will be used to determine whether the contractor's contract performance meets the department's requirements.

(c) If the contractor's performance on a project is below the department's acceptable standards for contract performance, the district engineer or the Director of the Support Services Division, as applicable, may work with the contractor to establish a recovery plan for the project. The established project recovery plan will be used to correct significant deficiencies in contractor performance. The district engineer or the Director of the Support Services Division, as applicable, will monitor and document the contractor's compliance with the established project recovery plan.

(d) District engineers for construction or maintenance contracts or the Chief Administrative Officer for building contracts will submit each evaluation performed under this section and each established project recovery plan and resulting documentation to the division of the department that is responsible for monitoring the contract.

(e) The division that receives evaluations of a contractor under subsection (d) of this section periodically will review the final evaluations of that contractor that were completed during the review period, or if fewer than 10 final evaluations were completed during the review period, up to 10 of the most recent final evaluations completed within the previous three-year period. If the average of the final evaluations reviewed in this period is below the department's acceptable standards for contract performance, the division will send a notice to the contractor and request that the contractor submit to the division for approval a proposed corrective action plan that will be used to correct significant deficiencies in the performance in all of contractor's projects. The division, in consultation with the department's Chief Engineer for construction or maintenance contracts, or Chief Administrative Officer for building contracts, may modify the proposed corrective action plan and adopt a final plan. The division promptly will send the adopted corrective action plan to the contractor.

(f) For the 120-day period beginning on the day that the adopted corrective action plan is sent under subsection (e) of this section, the division will monitor the contractor's active projects to determine whether the contractor is meeting the requirements of the adopted corrective action plan or if there are no active projects, the division will monitor the contractor's next available projects. Before making a determination under this subsection, the division must consider and document any events outside a contractor's control that contributed to the contractor's failure to meet the performance standards or failure to comply with the corrective action plan. If at the end of the 120-day period contract performance remains below the department's standards for contract performance, the division will notify the contractor and forward to the Performance Review Committee all of the information that it has, which includes at minimum all final evaluations, any adopted corrective action plans, and any information about events outside a contractor's control contributing to the contractor's performance.

§9.24. Performance Review Committee and Actions.

(a) The deputy executive director will appoint the members and chairman of the Performance Review Committee. The members and chairman serve at the discretion of the deputy executive director. The Performance Review Committee will review the information submitted to the committee under §9.23(f) of this subchapter, any documentation developed by the department during the evaluation process under §9.23 of this subchapter, and any documentation submitted by the contractor. The committee will determine whether grounds exist for action under this section. After reviewing the submitted information, the Performance Review Committee may recommend one or more of the following:

(1) take no action;

(2) reduce the contractor's bidding capacity;

(3) prohibit the contractor from bidding on one or more projects;

(4) immediately suspend the contractor from bidding for a specified period of time; or

(5) prohibit the contractor from being awarded a contract on which they are the apparent low bidder.

(b) The Performance Review Committee may recommend that one or more actions listed in subsection (a) of this section be taken immediately to ensure project quality, safety, or timeliness if:

(1) the contractor failed to execute a highway improvement contract after a bid is awarded, unless the contractor honored the bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);

(2) the commission, during the preceding 36-month period, rejected two or more bids by the contractor because of contractor error;

(3) the department declared the contractor in default on a highway improvement contract; or

(4) a district notifies the committee through the referring division that a contractor has failed to comply with a project recovery plan established under §9.23(c).

(c) If the committee determines that action under subsection (a) or (b) of this section is appropriate, the committee, except as provided by subsection (e) of this section, will confer with the Chief Engineer on the appropriate action to be taken and applied to the contractor. The committee will send its recommendation to the Deputy Executive Director within 10 business days after the date that it determines the action to be applied.

(d) The Deputy Executive Director will consider the Performance Review Committee's recommendation and make a determination of any action to be taken. Within 10 business days after the date of the Deputy Executive Director's determination, the department will send notice to the contractor and to appropriate department employees affected by the determination.

(e) A decision of the Deputy Executive Director under subsection (d) of this section may be appealed in accordance with §9.25 of this title (relating to Appeal of Remedial Action).

(f) If the Performance Review Committee, in the performance of its duties under this section finds information that indicates that grounds for the imposition of sanctions under Chapter 10 of this title (relating to Ethical Conduct by Entities Doing Business with the Department) may exist, the committee immediately shall provide that information to the department's Compliance Division.

§9.25. Appeal of Remedial Action.

(a) A remedial action taken under §9.24 of this subchapter (relating to the Performance Review Committee and Actions) may be appealed by delivering to the executive director a written notice of appeal within 15 working days after the effective date of the action as specified in its notice.

(b) If a notice of appeal is timely delivered under subsection (a) of this section:

(1) the remedial action is automatically stayed beginning on the date that the department receives the notice of appeal until the time that a final order is entered by the executive director under subsection (d) of this section; and

(2) the contractor will be given the opportunity for an informal hearing before the executive director.

(c) If the contractor chooses to have an informal hearing, the executive director will set a time for the hearing at the executive director's earliest convenience and will set the time allowed for oral presentations and written documents presented by the contractor.

(d) If an appeal to the executive director is not timely requested under this section, the executive director will issue a final order on the remedial action when the deadline for requesting an appeal has passed. If an appeal is timely requested, the executive director will issue a final order based on the executive director's decision of the appeal. The executive director will notify the contractor in writing of the executive director's appeal decision within five working days after the date that the decision is made.

(e) A final order issued by the executive director under subsection (d) of this section is not subject to judicial review, except as required by law.

§9.26. Inclusion of Contract Remedies in Contracts.

In addition to other contract provisions, each highway improvement contract must provide notice to the contractor of the evaluation of contract performance under §9.23 of this subchapter (relating to Evaluation and monitoring of contract performance) and the range of contract remedies applicable for substandard performance under the contract, including:

(1) the possible establishment of a project recovery plan or corrective action plan under §9.23 of this subchapter to correct significant deficiencies in contract performance;

(2) liquidated damages applicable to the contract under §9.22 of this subchapter (relating to Liquidated Damages);

(3) reduction in the contractor's bidding capacity under §9.24 of this subchapter;

(4) the prohibition or suspension of bidding on new projects under §9.24 of this subchapter; and

(5) prohibition from participating in an awarded contract under §9.24 of this subchapter.

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

Filed with the Office of the Secretary of State on May 24, 2018.

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: July 8, 2018
For further information, please call: (512) 463-8630

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SUBCHAPTER G. HIGHWAY IMPROVEMENT CONTRACT SANCTIONS

43 TAC §§9.101 - 9.115

STATUTORY AUTHORITY

The proposed repeals will be adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department and more specifically, Transportation Code,

§223.012, which requires the commission to adopt rules relating to contractor performance.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.003 and §223.012.

§9.101. Purpose and Application of Subchapter.
§9.102. Definitions.
§9.103. Notification of Rules.
§9.104. Delivery of Written Notice or Requests to the Department.
§9.105. Act of Individual or Entity Imputed to Contractor.
§9.106. Compliance Program.
§9.107. Grounds for Sanction.
§9.108. Procedure.
§9.109. Notice of Sanction.
§9.110. Available Sanctions.
§9.111. Application of Sanction.
§9.112. Appeal of Sanction.
§9.113. Indirect Sanction on an Affiliated Entity.
§9.114. Lessening or Removal of Sanction.
§9.115. List of Debarred or Suspended Contractors.

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

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SUBCHAPTER K. SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

43 TAC §§9.300 - 9.302, 9.305, 9.314, 9.316, 9.325, 9.330

The Texas Department of Transportation (department) proposes amendments to §§9.300 - 9.302, 9.305, 9.314, 9.316, 9.325, and 9.330 concerning the Small Business Enterprise (SBE) Program.

EXPLANATION OF PROPOSED AMENDMENTS

In its June 2017 Staff Report, the Sunset Advisory Commission recommended that the department evaluate its SBE program. The proposed amendments to Chapter 9, Subchapter K clarify the purpose and applicability of the SBE program and its relationship to the department's other small business programs, and streamline aspects of the SBE program, including certification and goal setting. Additionally, minor spelling and grammatical corrections were made.

Amendments to §9.300, Policy, clarify that the SBE program is supplemental to the federal Disadvantaged Business Enterprise (DBE) program and the state's Historically Underutilized Business (HUB) program as these are the department's primary methods for achieving small business participation on its contracts. Minor, non-substantive changes were also made.

Amendments to §9.301, Applicability of Program, clarify that the SBE program only applies to contracts for which the department has not set a DBE or HUB goal in accordance with federal and state regulations.

Amendments to §9.302, Definitions, correct misspellings and capitalization errors in two definitions.

Amendments to §9.305, Application for SBE Certification, clarify that any business certified as a DBE by any certifying partner of the Texas Unified Certification Program (TUCP) will be automatically certified as an SBE by the department, and any HUB certified by the Texas Comptroller of Public Accounts will be certified as an SBE upon request. Additionally, these amendments add that the department will certify as an SBE any firm that is currently certified as a DBE in the TUCP directory maintained by the department and has not already been certified as an SBE.

Amendments to §9.314(a), SBE Overall Goals, clarify that the department will set one overall SBE goal annually. The addition of §9.314(c) adds a requirement for the department to report annually on small business participation and the results of SBE certification, on SBE contract participation and actions needed to achieve the established annual SBE contracting goal.

Amendments to §9.316, Contractor Representative, §9.325, Performance, and §9.330, Complaints, are all minor, non-substantive corrections to the language previously adopted.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Michael D. Bryant, Director, Civil Rights Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Michael D. Bryant has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be increased opportunities for small businesses to participate on department contracts. There are no anticipated economic costs for persons required to comply with the proposed rules.

There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Michael D. Bryant has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, the state's economy will be positively impacted due to an increase in department contract opportunities for small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§9.300 - 9.302, 9.305, 9.314, 9.316, 9.325, and 9.330 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas

78701-2483 or to RuleComments@txdot.gov with the subject line "SBE Program Rules." The deadline for receipt of comments is 5:00 p.m. on July 9, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§9.300. Policy.

It is the policy of the department to:

(1) ensure that Small Business Enterprises (SBE) shall have an equal opportunity to participate in the performance of contracts;

(2) create a level playing field on which SBEs [~~Small Business Enterprises~~] can compete fairly for contracts and subcontracts;

(3) help remove barriers to the participation of Small Business Enterprises in department contracts;

(4) assist in the development of firms that can compete successfully in the market place outside the SBE [~~Small Business Enterprise~~] program; [~~and~~]

(5) develop and maintain a program in order to facilitate contracting opportunities for small businesses; and[~~.~~]

(6) conduct the SBE program to foster small business participation in compliance with 49 C.F.R. §26.39. The SBE program is a supplement to the federal Disadvantaged Business Enterprise (DBE) program and the state's Historically Underutilized Business (HUB) program, and is used when the DBE and HUB programs do not apply, as provided in §9.301 of this chapter (relating to Applicability of Program).

§9.301. Applicability of Program.

The SBE [~~Small Business Enterprise~~] program applies to all contracts for which the department has set neither a DBE goal nor a HUB goal. [~~highway construction and maintenance contracts that are funded entirely with state and local funds and all federally funded projects in which a DBE goal is not provided.~~]

§9.302. Definitions.

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

(1) Commission--The Texas Transportation Commission.

(2) Construction contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or reconstruction of a segment of the state highway system.

(3) Contract--A highway construction or maintenance contract that is subject to this subchapter.

(4) Contractor--One who participates, through a contract or any tier of subcontract, in a highway, transit, or airport program.

(5) Department--The Texas Department of Transportation.

(6) Disadvantaged [~~Disadvantage~~] Business Enterprise (DBE)--A business certified as a disadvantaged business in accordance with the Texas Unified Certification Program (TUCP).

(7) Executive director--The executive director of the department.

(8) Firm--A business entity, including a sole proprietorship, partnership, or other association, or corporation.

(9) Historically Underutilized Business (HUB)--Any business certified as a historically underutilized business by the Texas Comptroller of Public Accounts.

(10) Maintenance contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the maintenance of a segment of the state highway system.

(11) Respondent--A person that responds to an invitation to bid, request for proposal, or comparable solicitation related to a contract to which this subchapter applies.

(12) Small Business Enterprise [~~business enterprise~~] (SBE)--A firm that is certified as a small business enterprise under this subchapter.

§9.305. Application for SBE Certification.

(a) To be certified as an SBE, a firm must submit to the department, except as provided by subsection (b) of this section, a written application on a form prescribed by the department that affirms under penalty of perjury that the firm qualifies as an SBE.

(b) A firm certified as a DBE by any certifying partner of the TUCP will be automatically certified as an SBE by the department. The department will certify as an SBE any firm that is currently certified as a DBE in the TUCP directory maintained by the department and has not already been certified as an SBE. A HUB certified by the Texas Comptroller of Public Accounts will be certified as an SBE on request. [~~disadvantaged business enterprise (DBE) or a Historically Underutilized Business (HUB) is eligible to be considered for SBE certification without submitting an SBE application.~~]

(c) If requested by the department, an applicant must provide the requested materials and information necessary to demonstrate the qualifications as an SBE.

(d) A firm seeking certification has the burden of demonstrating by a preponderance of the evidence that it meets the certification standards.

§9.314. SBE Overall Goal [~~Goals~~].

(a) The executive director will establish an overall annual SBE contracting goal [~~goals~~] for the department based on the availability of certified SBEs and an estimation of SBE opportunities in the contracts that will be entered into in the year.

(b) The department will make a good faith effort to meet or exceed the annual goal.

(c) The department will report annually on small business participation with the department and the results of SBE certification, SBE contract participation, and actions needed to achieve the annual SBE contracting goal established by the executive director.

§9.316. Contractor Representative.

(a) A contractor that receives a contract with an SBE contract goal must designate an employee to serve as the SBE contact person during the contract.

(b) The contractor must inform the department of the representative's name, title, e-mail address, [~~if any,~~] and telephone number no later than five working days after the contract is signed.

(c) The SBE representative is responsible for submitting reports, maintaining records, and documenting good faith efforts to use SBEs.

§9.325. Performance.

(a) An SBE contractor or subcontractor shall comply with the terms of the contract or subcontract for which it was selected.

(b) Work products, services, and commodities must meet contract specifications.

(c) The SBE's work performance must include being responsible for:

(1) the performance of the work subject to the contract and for the execution of its responsibilities by actually performing, managing, and supervising the work involved; and

(2) the provision of the materials and supplies used in the performance of its contract, unless the contract provides for labor services only and is approved by the department, and includes:

(A) negotiation of the price of the materials and supplies;

(B) determination of the quality, if applicable, and quantity of the materials and supplies;

(C) ordering of the material and supplies;

(D) installation of the material, if applicable; and

(E) payment for the material.

(d) An SBE's performance should not include a role that is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether an SBE is an extra participant, the department will examine similar transactions, particularly those in which SBEs do not participate.

(e) An SBE [~~SBE's~~] must be responsible for at least 25 percent of the total cost of its contract with its own work force or, if a lesser percentage is expected under normal industry practice for the type of work involved, may not subcontract a greater portion of the work of the contract than would be expected on the basis of normal industry practice for that type of work.

§9.330. Complaints.

(a) This section does not apply to:

(1) a subcontractor's claim for additional payments or time extensions; or

(2) a discrimination complaint made against a department employee, which is handled in accordance with the department's Human Resources Manual.

(b) A complaint alleging a violation of the SBE program, including a claim of discrimination, may be filed by:

(1) an aggrieved person; or

(2) a person on behalf of another person or a specific class of individuals.

(c) The complaint must be in writing and must be sent to the department within 90 days after the date that:

(1) the alleged discrimination or violation of the SBE program occurred; or

(2) a continuing course of conduct in violation of the SBE program was discovered.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

The Texas Department of Transportation (department) proposes amendments to §§10.1, 10.2, 10.5, 10.7, 10.101, 10.102, 10.251 - 10.254, 10.256, and 10.257, and the repeal of §§10.151 - 10.160, 10.201 - 10.206, and 10.255 all concerning Ethical Conduct by Entities Doing Business with the Department.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

To implement the requirements of Senate Bill No. 312, 85th Regular Session, 2017, the department is reorganizing its rules governing contractor performance and required ethical conduct by entities doing business with the department. The amendments to 43 TAC Chapter 10 are needed to establish one department-wide process for sanctioning an entity doing business with the department for a violation of required ethical conduct.

Amendments to §10.1, Purpose, remove the reference to enforcement provisions provided for in Chapter 9, Subchapter G (relating to Highway Improvement Contract Sanctions), as those provisions will be repealed through amendments to Chapter 9 in a rulemaking occurring simultaneously with this rulemaking.

Amendments to §10.2, Definitions, §10.5, Benefit, and §10.7, Delegation of Authority, update definitions and titles to reflect the current department organizational structure. The amendment of the term "suspension" in §10.2 clarifies that a suspension, in addition to disqualifying an entity or individual from entering into an agreement with the department, disqualifies the entity or individual from participating as a subcontractor under a contract with the department and as a supplier of materials or equipment used under a contract with the department.

Amendments to §10.101, Required Conduct, revise the required conduct for entities doing business with the department to conform with conduct requirements in other chapters of the department rules and with contractor business ethics and conduct requirements for federal contracts.

Amendments to §10.102, Consequences of Violation, make nonsubstantive revisions to eliminate redundancy and to make the provision easier to understand.

Sections 10.151 - 10.160 (Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, And Surveying Service Providers) and §§10.201 - 10.206 (Subchapter E, Removal of Precertification of Architectural, Engineering, and Surveying Service Providers for Ethical Violations) related to score reduction and removal of precertification for ethical violations

by architectural, engineering, and surveying service providers are repealed, because these sections are no longer needed as amendments to §§10.102, 10.251 - 10.254, 10.256, and 10.257 establish one sanction process that applies to all entities doing business with the department. Provisions related to removal of precertification are moved to §10.254, relating to Available Sanctions, by this rulemaking.

Amendments to §§10.251 - 10.254, 10.256, and 10.257 (Subchapter F, Sanctions For Ethical Violations By Entities Doing Business With The Department) reorganize and revise the department's sanction processes for ethical violations by other entities to establish one sanction process for the department that applies to all entities doing business with the department. The department's executive director may impose a sanction on an entity for a violation of the required conduct established in §10.101.

The available sanctions listed in §10.254, Available Sanctions, remain: (1) a reprimand, (2) prohibition from participating in a specified agreement, (3) a limit on the contract amount or amount of funds that may be awarded or paid to the entity for a period of not more than 60 months, or (4) debarment of the entity for a period of not more than 60 months. New subsection (b) provides that for an engineering, architectural, or surveying service contract, the department's executive director may remove a person's or a firm's precertification provided under §9.33, and prohibit the person or firm from reapplying for precertification for the period set by the executive director, for a violation of required conduct established in §10.101. The substance of subsection (b) is moved here from §10.204(d), which is repealed by this rulemaking. The factors that the department's executive director must consider before imposing a sanction remain unchanged.

Section 10.255, Application of Sanction is repealed, because that section is no longer needed as this rulemaking establishes a single sanction process that applies to all entities doing business with the department.

Amendments to §10.256, Appeal of Sanction, Final Order, and Effective Date, reorganize and revise the section for clarity. Subsection (g) provides an exception to specified provisions of the section for removal precertification in order to maintain the substance of the former rules related to the removal of a person's precertification under Subchapter E of Chapter 10, which is repealed by this rulemaking.

Amendments to §10.257, Lessening or Removal of Sanction, clarify that a request for the reduction or removal of a sanction may not be made during the first year in which the sanction is imposed.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Ms. Kristin Alexander, Compliance Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Ms. Kristin Alexander, Compliance Division Director, has also determined that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improved integrity in the department's contract management processes. There are no anticipated economic costs for persons required to comply with the proposed rules. There will be no adverse economic effect on small businesses or a municipality with a population of less than 25,000 and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Kristin Alexander, Compliance Division Director, has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§10.1, 10.2, 10.5, 10.7, 10.101, 10.102, 10.251 - 10.254, 10.256, and 10.257, and the repeal of §§10.151 - 10.160, 10.201 - 10.206, and 10.255 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Sanctions for Ethical Violations Rules." The deadline for receipt of comments is 5:00 p.m. on July 9, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§10.1, 10.2, 10.5, 10.7

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.1. Purpose.

[~~(a)~~] As a steward of public resources, the department must ensure the protection of public funds and maintain a high level of transparency and accountability. Therefore, the department expects entities doing business with the department to adhere to ethical standards of conduct. This chapter prescribes required ethical standards for entities doing business with the department, and most enforcement provisions applicable for violations of the ethical standards.

[~~(b) The ethical requirements and enforcement provisions provided under this chapter do not apply to the federal government or an agency of the federal government.~~]

[~~(c) Enforcement provisions for ethical violations by a contractor who is subject to Chapter 9, Subchapter G of this title (relating to Highway Improvement Contract Sanctions) are provided under that chapter rather than under this chapter.~~]

[~~(d) The requirements and enforcement provisions provided under this chapter are in addition to any other contract, rule, or legal requirement or enforcement provision.~~]

§10.2. Definitions.

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

[~~(1) Assistant executive director--An assistant executive director of the Texas Department of Transportation.~~]

(1) [~~(2)~~] Commission--The Texas Transportation Commission.

(2) [~~(3)~~] Debarment--Disqualification of an entity from bidding on or entering into a contract with the department, from participating as a subcontractor under a contract with the department, and from participating as a supplier of materials or equipment to be used under a contract with the department.

(3) [~~(4)~~] Department--The Texas Department of Transportation.

(4) [~~(5)~~] Entity--A contractor, subcontractor, supplier, grantee, subgrantee, provider, subprovider, governmental agency, local government, or other business or governmental organization with which the department does business. The term does not include the federal government or an agency of the federal government.

(5) [~~(6)~~] Executive director--The executive director of the Texas Department of Transportation.

(6) [~~(7)~~] Reprimand--A written warning issued by the department that documents an act or omission committed by an entity.

(7) [~~(8)~~] Sanction--A consequence imposed on an entity for failure to comply with this chapter including [~~suspension,~~] reprimand, prohibition against participation in a specified agreement, or debarment.

(8) [~~(9)~~] Suspension--Immediate, temporary disqualification of an entity or individual from entering into or attempting to enter into an agreement with the department, from participating as a subcontractor under a contract with the department, and from participating as a supplier of materials or equipment to be used under a contract with the department.

§10.5. Benefit.

(a) Except as provided by subsection (b) of this section, a benefit, for the purposes of this chapter, is anything that is reasonably regarded as financial gain or financial advantage, including a benefit to another person in whose welfare the beneficiary has a direct and substantial interest, regardless of whether the donor is reimbursed. Examples are cash, loans, meals, lodging, services, tickets, door prizes, free entry to entertainment or sporting events, transportation, hunting or fishing trips, or discounts on goods or services.

(b) The following are not benefits for the purposes of this chapter:

(1) a token item, other than cash, a check, stock, bond, or similar item, that is distributed generally as a normal means of advertising and that does not exceed an estimated value of $25;

(2) an honorarium in the form of a meal served at an official, department-related event such as a conference, workshop, seminar, or symposium; or

(3) reimbursement for food, travel, or lodging to an event described by paragraph (2) of this subsection in an amount allowable under department policy if the recipient were to seek reimbursement from the department, or a greater amount if preapproved by the [~~assistant~~] executive director.

§10.7. Delegation of Authority.

[~~(a)~~] The executive director may delegate [~~to the assistant executive director~~] any authority provided to the executive director under this chapter, unless otherwise provided.[~~:~~]

[~~(b)~~] [~~The assistant executive director may delegate~~] to the deputy executive director of the department. [~~an employee of the department who is not below the level of district engineer, division director, or office director any authority provided to the assistant executive director under this chapter, including authority delegated under subsection (a) of this section, unless otherwise provided.~~]

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

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Joanne Wright
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SUBCHAPTER C. REQUIRED CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

43 TAC §10.101, §10.102

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.101. Required Conduct.

(a) An entity that does business with the department is required to:

(1) disclose to the department in writing the existence of a conflict of interest involving an agreement between the entity and the department and adequately remedy the conflict:

(A) before the effective date of the agreement; or

(B) if the conflict of interest arises after the effective date of the agreement, within five working days after the date that the entity knows or should have known of the conflict;

[~~(2) refrain from offering, giving, or agreeing to give a benefit to a member of the commission or to a department employee;~~]

(2) [~~(3)~~] adhere to all civil and criminal laws related to business;

(3) [~~(4)~~] maintain good standing with the comptroller, other state agencies, states, and agencies of the federal government with which the entity has had a business relationship;

(4) [~~(5)~~] notify the department in writing within five working days after the date that the entity knows or should have known of the existence of, and must adequately address:

(A) a conviction of a bidding crime, a plea of guilty or nolo contendere to a charge of a bidding crime, a civil judgment for a bidding crime, or a public admission to a bidding crime, whether made by the entity or by an individual or other entity that acted on behalf of [or offense related to business by] the entity;

(B) a conviction of an offense indicating a lack of moral or ethical integrity, such as bribery or payment of kickbacks or secret rebates to agents of a governmental entity, if the offense reflects on the business practices of the entity;

(C) [(B)] debarment of the entity by the comptroller, another state agency, another state, or an agency of the federal government for a ground related to business integrity; or

(D) [(C)] any behavior of the entity that seriously and directly affects the entity's responsibility to the department and that is also a violation of:

(i) the law; or

(ii) the department's rules that relate to the entity's dealing with the department.

(5) disclose to the department any discovery of credible evidence of:

(A) a violation of a law involving fraud, bribery, or conflict of interest in connection with the award or performance of its contract;

(B) a violation of this section on the part of a subcontractor or subprovider on its contract; or

(C) an overpayment on its contract;

(6) cooperate fully with the department or any other government agency responsible for audits, investigations, or corrective actions;

(7) prohibit its employees who have access to non-public information by reason of performance on a department contract from using the information for personal gain; and

(8) refrain from committing acts indicating a lack of moral or ethical integrity and reflecting on the business practices of the entity, including:

(A) offering, giving, or agreeing to give a benefit to a member of the commission or to a department employee;

(B) submitting an offer below anticipated costs, with an expectation of either increasing the contract amount after award or recovering incurred losses by receiving follow-on contracts at artificially high prices;

(C) disclosing or receiving bid or proposal information in exchange for a thing of value or to give anyone a competitive advantage in the award of a department contract;

(D) retaliating against an employee for disclosing information to the department relating to a violation of law related to a department contract, including the competition for or negotiation of a contract;

(E) knowingly entering into a subcontract with an entity that is suspended or debarred by the department;

(F) making false or misleading statements in order to obtain a benefit, including falsifying or permitting misrepresentation of its qualifications; or

(G) disposing of waste in an unauthorized area.

(b) In this section, "bidding crime" means an act prohibited by state or federal law that involves fraud, conspiracy, collusion, perjury, or material misrepresentation with respect to a public contract, regardless of where the act was committed.

§10.102. Consequences of Violation.

[(a) An entity's violation of §10.101 of this subchapter (relating to Required Conduct) is a ground for the imposition of sanctions , score reduction, or removal from precertification status under this chapter.]

[(b)] In addition to the imposition of sanctions under Subchapter F of this chapter (relating to Sanctions For Ethical Violations By Entities Doing Business With The Department) [any consequences imposed under subsection (a) of this section], the department may disqualify an entity with a conflict of interest described by §10.6(b) of this chapter (relating to Conflict of Interest) from participating in a contract to which the conflict applies, or may deny payment for work performed by the former department employee under the contract. The department may not disqualify or deny payment to an entity under this section [subsection on the basis of facts] if the department has issued to the entity a written determination under §10.6 of this chapter that the [those same] facts that are the basis of the disqualification or denial do not constitute a conflict of interest.

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

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Joanne Wright
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SUBCHAPTER D. SCORE REDUCTION FOR ETHICAL VIOLATIONS BY ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICE PROVIDERS

43 TAC §§10.151 - 10.160

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.151. Definitions.
§10.152. Score Reduction for Ethical Violations.
§10.153. Member Score Reduction Applied to Team.
§10.154. Factors Considered in Imposing Score Reduction.
§10.155. Amount and Period of Score Reduction.
§10.156. Notice of Score Reduction.
§10.157. Application of Score Reduction.

§10.158. Appeal of Score Reduction.

§10.159. Lessening or Removal of Score Reduction.

§10.160. Publication of Names of Providers Receiving Score Reductions.

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

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Joanne Wright
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SUBCHAPTER E. REMOVAL OF PRECERTIFICATION OF ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICE PROVIDERS FOR ETHICAL VIOLATIONS

43 TAC §§10.201 - 10.206

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.201. Purpose.

§10.202. Factors Considered in Removing Precertification.

§10.203. Time Period of Prohibition from Reapplying for Precertification.

§10.204. Notice of Removal of Precertification.

§10.205. Appeal of Removal of Precertification.

§10.206. Eligibility to Reapply for Precertification.

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

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SUBCHAPTER F. SANCTIONS FOR ETHICAL VIOLATIONS BY OTHER ENTITIES

43 TAC §§10.251 - 10.254, 10.256, 10.257

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.251. Application of Subchapter.

[~~(a) This subchapter applies only to an individual or entity doing business with the department that is subject to this chapter but not subject to either Subchapter D, Score Reduction for Ethical Violations by Architectural, Engineering, and Surveying Service Providers, of this chapter or Chapter 9, Subchapter G of this title (relating to Highway Improvement Contract Sanctions).~~]

[~~(b)~~] The sanctions provided by this subchapter are in addition to other actions and remedies available to the department.

§10.252. Imposition of Sanctions [~~Procedure~~].

(a) The executive director may impose a sanction on an entity [~~if a ground~~] for a violation of [~~sanction under~~] §10.101 of this chapter (relating to Required Conduct) [~~exists~~]. [~~The executive director will impose sanctions under this subchapter in accordance with §10.255(c) of this subchapter (relating to Application of Sanction).~~]

[~~(b) Except as provided in §10.256(g) of this subchapter (relating to Appeal of Sanction), a sanction is effective on the date specified in the notice of sanction under §10.253 of this subchapter (relating to Notice of Sanction).~~]

(b) [~~(c)~~] The imposition of a sanction on an entity does not affect the entity's obligations under an agreement with the department or limit the department's remedies under the agreement.

[~~(d) The executive director, concurrent with the delivery of the notice of a sanction other than a reprimand, may suspend an entity without a prior hearing. Before imposing a suspension, the executive director will consider all relevant circumstances, including the severity and willfulness of the conduct, the likelihood of immediate harm to the public, and whether there has been a pattern of inappropriate conduct. The suspension terminates when a final order is entered under §10.256(e) of this subchapter.~~]

§10.253. Notice of Sanction; Suspension.

(a) If the executive director imposes a sanction under this subchapter, the department will notify the entity by certified mail within five working days after the date of the executive director's decision. The notice will:

(1) state the sanction and the time period of the sanction, if applicable;

(2) summarize the facts and circumstances underlying the sanction;

(3) explain how the sanction was selected[~~; using §10.255(c) of this subchapter (relating to Application of Sanction) as a basis for explanation~~];

(4) if applicable, inform the entity of the imposition of a suspension under subsection (b) of this section [~~§10.252(d) of this subchapter (relating to Procedure)~~]; and

(5) state that the entity [~~provider~~] may appeal the sanction [~~reduction~~] in accordance with §10.256 of this subchapter (relating to Appeal of Sanction, Final Order, and Effective Date).

(b) The executive director, concurrent with the delivery of the notice of a sanction other than a reprimand, may suspend an entity without a prior hearing. Before imposing a suspension, the executive

director will consider all relevant circumstances, including the severity and willfulness of the conduct, the likelihood of immediate harm to the public, and whether there has been a pattern of inappropriate conduct. The suspension terminates when a final order on the sanction is issued by the executive director under §10.256 of this subchapter (relating to Appeal of Sanction, Final Order, and Effect Date).

§10.254. Available Sanctions.

(a) The available sanctions, in order of increasing severity, are:

(1) a reprimand;

(2) prohibition from participating in a specified agreement, whether the agreement was previously awarded or to be awarded or whether funds under the agreement have been paid or are to be paid;

(3) a limit on the contract amount or amount of funds that may be awarded or paid to the entity for a period of not more than 60 months; or

(4) debarment of the entity for a period of not more than 60 months.

(b) Relating to an engineering, architectural, or surveying service contract, the executive director may remove a person's or a firm's precertification provided under §9.33 of this title (relating to Precertification), and prohibit the person or firm from reapplying for precertification for the period set by the executive director, if a ground for removal of precertification under §10.101 of this chapter (relating to Required Conduct) exists.

(c) [~~(b)~~] Before imposing a sanction, the executive director will consider the following factors:

(1) the seriousness and willfulness of the act or omission;

(2) whether the entity has committed similar acts or omissions and if so, when those acts or omissions were committed;

(3) whether the entity, or a third party on behalf of the entity, has fully compensated the department for any damages suffered by the department as a result of the entity's acts or omissions; and

(4) any mitigating factors.

(d) [~~(c)~~] For the purposes of subsection (c)(4) [~~(b)(4)~~] of this section, the following are mitigating factors:

(1) the entity's adoption and enforcement of an internal ethics and compliance program that satisfies the requirements of §10.51 of this chapter (relating to Internal Ethics and Compliance Program);

(2) the entity's cooperation with the department in the investigation of ethical violations, including the provision of a full and complete account of the entity's involvement; or

(3) the entity's disassociation from individuals and firms that have been involved in the ethical violation.

(e) The removal a person's or a firm's precertification under subsection (b) of this section does not prevent that person or firm from participating in agreements with the department in a capacity that does not require precertification unless the executive director imposes a suspension under §10.253(b) of this subchapter (relating to Notice of Sanction; Suspension).

(f) If an entity commits multiple violations arising out of separate occurrences, the executive director may impose multiple sanctions.

§10.256. Appeal of Sanction, Final Order, and Effective Date.

(a) An entity may appeal a [~~A~~] sanction, other than a reprimand, [~~and~~] unless the sanction was ordered or directed by the federal government, [~~may be appealed to the executive director~~] by delivering to the executive director a written notice of appeal within 10 working days after the effective date of the sanction as specified in the notice of sanction. If the notice of appeal is timely delivered, the entity will be given the opportunity for an informal hearing before the executive director. The executive director will set a time for the hearing at the executive director's earliest convenience. The executive director will set time the maximum allowed for oral presentations and the procedure for written documents to be presented by the entity. After the hearing the executive director will make a determination on the imposition of the sanction and may impose a lesser sanction. The executive director will notify the entity in writing within 5 working days of the executive director's determination on the appeal.

(b) If the entity is dissatisfied with the determination of the executive director, the entity may request an administrative hearing under §1.21 et seq. of this title (relating to Procedures in Contested Cases). To be effective the request must be received by the executive director within 10 working days after the date that the executive director mails the notification of determination under subsection (a) of this section.

(c) The proposal for decision will be presented to the commission at a regularly scheduled open meeting. The commission may consider oral presentations. The commission will make a determination based on the proposal for decision. The commission's determination on the proposal for decision will be adopted by minute order and reflected in the minutes of the meeting.

(d) If an appeal to the executive director or by an administrative hearing, as appropriate, is not timely requested under this section, the executive director will issue a final order imposing the sanction when the deadline for requesting an appeal has passed. If an appeal is timely requested, the executive director will issue a final order based on one of the following:

(1) the executive director's determination under subsection (a) of this section; or

(2) the commission's determination under subsection (c) of this section.

(e) If the only sanction being imposed is a reprimand, the entity may appeal the reprimand by delivering to the executive director a written notice of appeal and written documentation disputing the reprimand within 10 working days after the effective date of the sanction as specified in the notice of sanction. The executive director will make the determination on an appeal and issue a final order under this subsection. A final order issued under this subsection is not subject to judicial review, except as required by law.

(f) A sanction is effective on the later of the date specified in the notice of sanction under §10.253 of this subchapter (relating to Notice of Sanction; Suspension) or the date of, or specified in, the final order issued by the executive director under this section.

(g) Subsections (b) - (e) of this section do not apply to the sanction of removal a person's or a firm's precertification under §10.254(b) of this subchapter (relating to Available Sanctions). The executive director may not delegate authority provided under subsection (a) of this section for the appeal of removal a person's or a firm's precertification under subsection (b) of this section.

[~~(f) A sanction, other than a suspension or a reprimand, is automatically stayed from the date that the department receives the notice of appeal until a final order is entered by the executive director. On entry of a final order by the executive director imposing the sanction, the full term of the sanction will be imposed on the date of the final order unless the executive director expressly orders that a lesser sanction be imposed.~~]

[(g) The order of the executive director issued under subsection (e) of this section is final and not subject to judicial review, except as required by law.]

§10.257. Lessening or Removal of Sanction.

(a) An entity may request the reduction or removal of a sanction imposed under this subchapter by delivering to the executive director the request in writing and written documentation in support of the request demonstrating changes in the circumstances that were described in the notice of the sanction [score reduction] under §10.253 of this subchapter (relating to Notice of Sanction; Suspension).

(b) The executive director, at the executive director's sole discretion, may decide to reduce or remove the sanction. The executive director will send a written notice of the decision to the entity.

(c) A request may not be made under this section during the first year of the sanction, beginning on the effective date of the sanction, as determined under §10.256(f) of this subchapter (relating to Appeal of Sanction, Final Order, and Effective Date). After that period, the [The] executive director will consider not more than one request under this section during any 12-month period.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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43 TAC §10.255

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.255. Application of Sanction.

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

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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 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.50, §30.67

The Texas Department of Agriculture (Department) adopts amendments to 4 TAC §30.50, relating to the Community Development (CD) Fund, and new §30.67, relating to the Utility U Job Training Program. The amendments and new rule are adopted without changes to the proposal published in the April 20, 2018, issue of the *Texas Register* (43 TexReg 2325). The amendments to §30.50 update scoring elements for the CD Fund and clarify language relating to Regional Review Committees. New §30.67 creates and implements rules relating to the Utility U Job Training Program, a new funding category under the Department's Texas Capital Fund Program which is part of the state's Community Development Block Grant Program.

No comments were received on the proposal.

The adoption is made under Texas Government Code §487.051, which provides the Department the authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code Chapter 487.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board adopts an amendment to §113.14, concerning Statements of Policy, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7010).

The amendment adopts by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended by NASAA on September 11, 2016, and a new SOP that was adopted by NASAA on May 8, 2017. The amendment also updates the reference to the Agency's website in subsection (c).

The amendment to §113.14 increases uniformity with other states when reviewing applications to register securities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Civil Statutes, Article 581-7.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201802273
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: June 12, 2018
Proposal publication date: December 15, 2017
For further information, please call: (512) 305-8303

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.19, §115.20

The Texas State Securities Board adopts amendments to §115.19, concerning Texas crowdfunding portal registration and activities, and §115.20, concerning Texas crowdfunding portal registration and activities of small business development entities, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7011). A new related rule, §139.26, creating a new intrastate crowdfunding offering exemption, is being concurrently adopted, as are new related forms for portal registration.

The amendment to §115.19 allows Texas crowdfunding portals to offer and sell securities by issuers using either of the Texas intrastate crowdfunding offering exemptions; limits the website requirements of subsection (b)(1)of the rule to §139.25 offerings; and adds cross references to the new §139.26 exemption.

The amendment to §115.20 allows Texas crowdfunding portals that are small business development entities to offer and sell securities by issuers claiming either of the Texas intrastate crowdfunding offering exemptions.

Texas crowdfunding portals are allowed to sell securities offerings by issuers claiming either of the Texas intrastate crowdfunding offering exemptions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The amendment to §115.20 is also adopted under Texas Civil Statutes, Article 581-44. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The adopted amendments affect Texas Civil Statutes, Article 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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7 TAC §115.21

The Texas State Securities Board adopts new §115.21, concerning system addressing suspected financial exploitation of vulnerable customers pursuant to the Texas Securities Act, Section 45, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7013).

New §115.21 implements Section 45 of the Texas Securities Act, which was added by House Bill 3921, passed during the last legislative session. The bill requires securities dealers and investment advisers to adopt internal policies and procedures on the reporting and assessment requirements and on holding transactions involving the account of a vulnerable adult who was believed to be subject to financial exploitation. The policies and procedures require the entity to report suspected financial exploitation to the Securities Commissioner, and other appropriate agencies.

The new rule alerts dealers of the new requirement to adopt policies, programs, plans, or procedures pursuant to Section 45; requires that such policies be reduced to writing; and sets out the content of the report and the procedure a dealer would follow to make the report to the Securities Commissioner. A template for making the report is available on the Agency's website.

The rule informs registered dealers that the procedures required by Section 45 of the Texas Securities Act must be reduced to writing and informs registered dealers of the content of the reports required to be made under Section 45.

One comment letter was received from the Financial Services Institute. The commenter expressed strong support for the new rule that incorporates necessary measures to implement HB 3921. The commenter noted that this change will provide dealers with clarity and a safe harbor to report suspected financial exploitation. The Board agreed and adopted the new rule as published.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Article 582-45.N. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 45.N provides the Board with the authority to prescribe the form and content of a report of suspected financial exploitation of a vulnerable adult by a dealer or investment adviser.

The new rule affects Texas Civil Statutes, Articles 581-14 and 581-45.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Travis J. Iles
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State Securities Board
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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.21

The Texas State Securities Board adopts new §116.21, concerning system addressing suspected financial exploitation of vulnerable customers pursuant to the Texas Securities Act, Section 45, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7014).

New §116.21 implements Section 45 of the Texas Securities Act, which was added by House Bill 3921, passed during the last legislative session. The bill requires securities dealers and investment advisers to adopt internal policies and procedures on the reporting and assessment requirements and on holding transactions involving the account of a vulnerable adult who was believed to be subject to financial exploitation. The policies and procedures require the entity to report suspected financial exploitation to the Securities Commissioner, and other appropriate agencies.

The new rule alerts investment advisers of the new requirement to adopt policies, programs, plans, or procedures pursuant to Section 45; requires that such policies be reduced to writing; and sets out the content of the report and the procedure an investment adviser would follow to make the report to the Securities Commissioner. A template for making the report is available on the Agency's website.

The rule informs registered investment advisers that the procedures required by Section 45 of the Texas Securities Act must be reduced to writing and of the content of the reports required to be made under Section 45.

One comment letter was received from the Financial Services Institute. The commenter expressed strong support for the new rule that incorporates necessary measures to implement HB 3921. The commenter noted that this change will provide investment advisers with clarity and a safe harbor to report suspected financial exploitation. The Board agreed and adopted the new rule as published.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1 and Article 582-45.N. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 45.N provides the Board with the authority to prescribe the form and content of a report of suspected financial exploitation of a vulnerable adult by a dealer or investment adviser.

The new rule affects Texas Civil Statutes, Articles 581-14 and 581-45.

The new rule affects Texas Civil Statutes, Articles 581-14 and 581-45.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Travis J. Iles
Securities Commissioner
State Securities Board
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Proposal publication date: December 15, 2017
For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.15, §133.20

The Texas State Securities Board adopts the repeal of §133.15 and §133.20, without changes to the proposal as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7015). The repealed rules adopted by reference the Texas Crowdfunding Portal Registration form and the Texas Crowdfunding Portal registration by an authorized small business development entity form. Repeal of the existing forms allows for the simultaneous adoption of new updated forms which are being concurrently adopted.

Outdated forms have been eliminated.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. The repeal of §133.20 is also adopted under Texas Civil Statutes, Article 581-44. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The adopted repeals affect Texas Civil Statutes, Article 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §133.15, §133.20

The Texas State Securities Board adopts two new rules, concerning forms adopted by reference, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7016). Specifically, the State Securities Board adopts §133.15, which adopts by reference the Texas Crowdfunding Portal Registration form; and §133.20, which adopts by reference the Texas Crowdfunding Portal Reg-

istration by an Authorized Small Business Development Entity form.

Texas crowdfunding entities will be able to use the forms to register as portals to sell securities offered by crowdfunding issuers claiming either the existing intrastate exemption in §139.25 or the new adopted intrastate exemption in §139.26.

The new forms will allow Texas entities to register as Texas crowdfunding portals that can sell securities offerings by crowdfunding issuers under both exemptions without the entities having to submit a separate portal registration for the two different exemptions.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. New rule §133.20 is also adopted under Texas Civil Statutes, Article 581-44. Section 44 provides the Board with the authority to adopt rules to regulate and facilitate online intrastate crowdfunding by authorized small business development entities.

The new rules affect Texas Civil Statutes, Article 581-12, 581-13, 581-14, 581-15, 581-18, and 581-44.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8303

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7 TAC §133.21

The Texas State Securities Board adopts a new rule §133.21, which adopts by reference the Crowdfunding Exemption Notice (SEC Rule 147A Offerings using §139.26) form, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7017).

Form 133.21 will be used by an issuer to file a crowdfunding exemption notice pursuant to §139.26.

Form 133.21 will allow issuers to take advantage of the relaxed requirements of the more flexible intrastate crowdfunding offering exemption in §139.26.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Article 581-7.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.26

The Texas State Securities Board adopts new §139.26, concerning intrastate crowdfunding exemption for SEC Rule 147A Offerings, without changes to the proposed text as published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7017).

The new rule provides an additional registration exemption for securities offered in an intrastate crowdfunding offering. The filing used to claim the exemption is new Form 133.21, which is being concurrently adopted. Amendments to §115.19 and §115.20, concerning Texas crowdfunding portal registration and activities, are also being concurrently adopted to allow Texas crowdfunding portals to offer and sell exempt securities offered pursuant to the new exemption.

The new rule for offerings under SEC Rule 147A allows issuers to take advantage of the relaxed intrastate offering and sales requirements of the Rule 147A exemption by providing a corresponding Texas exemption. Under the new rule, the offering must comply with Rule 147A at the federal level. Accordingly, the issuer must have a principal place of business in Texas and the sales must be limited to Texas residents.

The new rule incorporates much of the flexibility offered under Rule 147A while retaining the safeguards and investor protections built into the existing Texas intrastate crowdfunding structure, including requiring communications between the issuer, prospective purchasers, or investors to take place through the communications channel provided on the Internet website of the registered general dealer or registered Texas crowdfunding portal, and to be visible to others on the site; and granting the Securities Commissioner access to the Internet website prior to and during an offering.

Another of the expansions permitted under Rule 147A is that it permits general solicitation and advertising regardless of whether the information can be seen by persons not located in the offering state. Accordingly, even though the new rule limits communications to the website channel, as in §139.25, the new rule permits an issuer to disseminate limited information to

persons outside of Texas without jeopardizing the availability of the exemption.

As with offerings under §139.25, the new rule requires a disclosure statement and financial statements be provided to prospective purchasers and incorporates provisions containing disqualifications and prohibiting certain relationships. Material information and risk factors must be disclosed, and topics to be addressed in the disclosure document are noted. Additional guidance for content of the disclosure statement is posted on the Agency's website with other small business and crowdfunding information.

The new rule requires a notice filing on Form 133.21 (Crowdfunding Exemption Notice for SEC Rule 147A Offerings), which is concurrently adopted, along with a copy of the issuer's disclosure statement and the summary of the offering that appear on the Internet website.

Payments to unregistered persons are prohibited as are certain compensation arrangements and affiliations between an issuer and the general dealer or Texas crowdfunding portal operating the website on which its offering appears.

The rule contains bad actor disqualifications and limits availability of the exemption based on activities involving related issuers or affiliates. Issuers should be aware that, although a prior incident may not be a disqualification under this rule, it may still need to be disclosed to potential purchasers and investors if it is material information.

The new rule is expected to spur small business development in the state by making it easier for entrepreneurs and start-ups to raise capital through Internet crowdfunding by taking advantage of the relaxed requirements of the more flexible intrastate crowdfunding offering exemption in the new rule.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Articles 581-5.T, 581-12.C, and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 12.C provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-7, 581-12, 581-13, 581-14, 581-15, and 581-18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES RELATIONSHIP

19 TAC §61.1

The State Board of Education (SBOE) adopts an amendment to §61.1, concerning continuing education for school board members. The amendment to §61.1 is adopted with changes to the proposed text as published in the March 9, 2018 issue of the *Texas Register* (43 TexReg 1349). The proposed amendment would reflect changes made by Senate Bill (SB) 1566, 85th Texas Legislature, Regular Session, 2017, to the SBOE's duty to provide training courses for independent school district trustees.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §11.159, Member Training and Orientation, requires the SBOE to provide a training course for school board trustees. Section 61.1 addresses this statutory requirement. School board trustee training under current SBOE rule includes a local school district orientation session, a basic orientation to the TEC, an annual team-building session with the local school board and the superintendent, and specified hours of continuing education based on identified needs.

SB 1566, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §11.159, to specify that the SBOE shall require board members to complete at least three hours of training every two years on evaluating student academic performance. The bill also outlines when a board member must complete this training.

The adopted amendment to §61.1 implements SB 1566 as follows.

Subsection (b)(1)(A) was amended to specify when a new board member must participate in a local district orientation session. A technical change was made at second reading and final adoption to conform with TEC, §11.159(c). The change allows a board member 120 days after the election to attend the board orientation session.

Subsection (b)(2) was amended to specify the required length of the team-building session. A technical change was made at second reading and final adoption that restores the previously deleted phrase "at least." This change makes clear that the team-building session can be longer than three hours.

In subsection (b), new paragraph (4) was added to require the entire board to receive continuing education on evaluating student academic performance. The purpose of the training is to provide research-based information to board members designed to support the oversight role of the board of trustees outlined in the TEC, §11.1515. New paragraph (4) specifies when board members must take the training, how a registered provider can become authorized to provide the training, the required length of the training, and the information that must be included in the training. The new paragraph also allows the training on evaluating student academic performance to meet the requirement for a team-building session if the entire school board and superintendent attend the training. In response to public comment,

changes were made at second reading and final adoption to remove the requirement in subsection (b)(4)(E) that the continuing education training on evaluating student academic performance be approved by the Texas Education Agency (TEA) and to modify subsection (b)(4)(C) to allow a registered provider to become an authorized provider through a review of the provider's qualifications and course design. Also in response to public comment, a change was made to subsection (b)(4)(F) at second reading and final adoption to specify that credit for training outlined in subsection (b)(2) is only allowed if conducted in compliance with the Texas Open Meetings Act.

Subsection (d) was amended to specify that a district is not responsible for any costs to train an individual who is not a current board member.

Subsection (f)(4) was added to clarify that an ESC is not required to register as a provider. This provision makes it clear that ESCs can provide training required by TEC, §11.159(c), without going through the registration and authorization process required for other authorized providers.

Subsection (j) was amended to require the school board president to announce and include in the minutes of the last regular board meeting before an election of trustees whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment. If the minutes from that meeting reflect that a trustee is deficient in training, the minutes are required to be posted on the district's Internet website within 10 business days of the meeting and remain on the website until any trustee training deficits have been corrected. A technical change was made at second reading and final adoption to conform with TEC, §11.159(b). The change requires the disclosure be made only at the last regular board meeting before an election.

New subsection (l) was added to provide for an annual commendation for local board-superintendent teams that effectively implement the commissioner's trustee improvement and evaluation tool developed under the TEC, §11.182. In response to public comment, a change was made at second reading and final adoption to add that a local board-superintendent team may receive a commendation for effectively implementing any other tool approved by the commissioner. This change was made so the SBOE would not be limited to issue commendations only for the effective implementation of the commissioner's trustee improvement and evaluation tool developed under the TEC, §11.182.

The amendment was approved by the SBOE for first reading and filing authorization at its February 2, 2018 meeting and for second reading and final adoption at its April 13, 2018 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2018-2019 school year. The earlier effective date will align the rule with SB 1566, which took effect September 1, 2017.

SUMMARY OF COMMENTS AND RESPONSES. Following the January-February 2018 SBOE meeting, notice of the proposed amendment to 19 TAC §61.1 was filed with the *Texas Register,* initiating the public comment period. Following is a summary of the public comments received and the corresponding responses.

Comment: The Texas Association of School Boards (TASB) recommended removing the requirement in §61.1(b)(4)(E) that the continuing education training required by §61.1(b)(4) be approved by the TEA. TASB also recommended that §61.1(b)(4)(C) be modified to allow a provider who is registered pursuant to subsection (f) to become an authorized provider pursuant to subsection (b)(4) through a review of the provider's qualifications and course design.

Response: The SBOE agrees and modified §61.1(b)(4)(C) and (E) accordingly at second reading and final adoption.

Comment: TASB expressed concern with the inclusion of Lone Star Governance (LSG) coaches as individuals who are automatically included as authorized providers under §61.1(b)(4)(C). TASB stated that the LSG coaches training is fundamentally different in that it does not include instruction in aspects of §61.1(b)(4)(E)(iii) (e.g., state accountability).

Response: The SBOE disagrees that an LSG coach cannot perform the duties of an authorized provider. The training that the LSG governance coach receives along with the requirements for registrations, which includes the documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership. Providers who meet the requirements for registration and who have received LSG governance training have demonstrated proficiency in the content required by this rule.

Comment: TASB expressed concern with language in §61.1(b)(4)(F) that allows the training on evaluating student academic performance outlined in §61.1(b)(4) to meet the requirement of the board member and superintendent training outlined in §61.1(b)(2) under specific circumstances. Specifically, TASB is concerned that this subparagraph would undermine the training requirements specific to the training in §61.1(b)(2). Further, the use and review of school district data could lead to violations of the Open Meetings Act as outlined in Texas Government Code.

Response: The SBOE disagrees that this language would lead to violations of the Open Meetings Act, but agrees that the rule could make this explicitly clear. The SBOE modified language in §61.1(b)(4)(F) at second reading and final adoption to specify that credit for training outlined in §61.1(b)(2) is only allowed if conducted in compliance with the Open Meetings Act. The SBOE disagrees that the rule undermines the training requirements in §61.1(b)(2) and has determined that both trainings are compatible. The rule only allows credit for the training if it meets the requirements of §61.1(b)(2).

Comment: Region 5 Education Service Center (ESC 5) expressed concern about the requirement in §61.1(b)(4)(F) that requires the use and review of school district data for the training on evaluating student academic performance outlined in §61.1(b)(4) to meet the requirement of the board the training outlined in §61.1(b)(2). ESC 5 stated that this would be problematic for the ESCs and other authorized providers to implement.

Response: The SBOE disagrees. The inclusion of the district data review is necessary to ensure that the requirements of both trainings are fulfilled. Where the delivery of training in subsection (b)(2) is problematic due to the use of student data, the trainings can be provided separately.

Comment: TASB recommended that the following language remain in §61.1(j), as approved for first reading: "In any year in which an election of board members will not be held, the annual announcement should be made at the regular meeting preceding the uniform election date at which board members are regularly elected for the school district." TASB stated that removing

this language creates confusion as to when board members on a November election cycle would report school board training.

Response: While the SBOE does agree board members on an election cycle could be confused by the language regarding the new reporting requirements, the SBOE disagrees that the language as proposed in first reading should remain. Instead, the SBOE modified language in §61.1(j) at second reading and final adoption to read: "The minutes of the last regular board meeting before an election of trustees must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment." This language better aligns with statute. While different training election schedules might create different reporting circumstances for board members, the SBOE does not believe that the legislature gave the rulemaking authority to require announcements to be made outside of those outlined in statute. Nothing in the statute or rule prohibits a school board from reflecting the training status of its board members in the minutes of its board meeting before the uniform election date in years where the board does not hold elections.

Comment: TASB stated that it is not in the best interest of Texas school boards, local governance, or public school children for the SBOE to commend school boards for using the commissioner's fidelity instrument as outlined in §61.1(l). TASB stated that there is no evidence that that use of the instrument improves governance or student outcomes. TASB further commented that if the SBOE does issue such commendations, it should be able to commend other board evaluation tools.

Response: This specific tool was introduced by the 85th Texas Legislature, Regular Session, 2017, and, therefore, lacks the history for longitudinal data. However, the SBOE believes that data-driven schools have historically proven to be able to make better decisions for their students. Therefore, the SBOE disagrees that commending districts that effectively implement the commissioner's improvement and evaluation tool would be against the interest of Texas school boards, local governance, or public school children. However, the SBOE does agree that the rule should be more flexible to allow commendations for other board evaluation tools that are approved by the commissioner. The SBOE modified language in §61.1(b)(4)(F) at second reading and final adoption to allow such commendations.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code, §11.159, which requires the State Board of Education to provide a training course for school board trustees, including three hours of training every two years on evaluating student academic performance.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §11.159.

§61.1. Continuing Education for School Board Members.

(a) Under the Texas Education Code (TEC), §11.159, the State Board of Education (SBOE) shall adopt a framework for governance leadership to be used in structuring continuing education for school board members. The framework shall be posted to the Texas Education Agency (TEA) website and shall be distributed annually by the president of each board of trustees to all current board members and the superintendent.

(b) The continuing education required under the TEC, §11.159, applies to each member of an independent school district board of trustees. The continuing education requirement consists of orientation sessions, an annual team-building session with the local board and the superintendent, and specified hours of continuing education based on identified needs. The superintendent's participation in team-building sessions as part of the continuing education for board members shall represent one component of the superintendent's ongoing professional development.

(1) Each school board member of an independent school district shall receive a local district orientation and an orientation to the TEC.

(A) Each new board member shall participate in a local district orientation session within one year before or 120 days after the board member's election or appointment. The purpose of the local orientation is to familiarize new board members with local board policies and procedures and district goals and priorities. The local district orientation shall be at least three hours in length for each new board member. Any sitting board member may attend or participate in the local district orientation. The local district orientation shall address local district practices in the following, in addition to topics chosen by the local district:

(i) curriculum and instruction;

(ii) business and finance operations;

(iii) district operations;

(iv) superintendent evaluation; and

(v) board member roles and responsibilities.

(B) A sitting board member shall receive a basic orientation to the TEC and relevant legal obligations. The orientation shall have special but not exclusive emphasis on statutory provisions related to governing Texas school districts. The orientation shall be delivered by regional education service centers (ESCs) and shall be no less than three hours in length. Topics shall include, but not be limited to, the TEC, Chapter 26 (Parental Rights and Responsibilities), and the TEC, §28.004 (Local School Health Advisory Council and Health Education Instruction). A newly elected or appointed board member of an independent school district shall receive the orientation to the TEC within the first 120 days of service. The orientation to the TEC shall be open to any sitting board member who chooses to attend.

(C) After each session of the Texas Legislature, including each regular session and called session related to education, each school board member shall receive an update from an ESC or any registered provider to the basic orientation to the TEC. The update session shall be of sufficient length to familiarize board members with major changes in the code and other relevant legal developments related to school governance. A board member who has attended an ESC basic orientation session that incorporates the most recent legislative changes is not required to attend an update.

(2) The entire board, including all board members, shall annually participate with their superintendent in a team-building session facilitated by the ESC or any registered provider. The team-building session shall be at least three hours in length. The purpose of the team-building session is to enhance the effectiveness of the board-superintendent team and to assess the continuing education needs of the board-superintendent team. The session shall include a review of the roles, rights, and responsibilities of a local board as outlined in the framework for governance leadership. The assessment of needs shall be based on the framework for governance leadership and shall be used to plan continuing education activities for the year for the governance leadership team.

(3) In addition to the continuing education requirements in paragraphs (1) and (2) of this subsection, each board member shall receive additional continuing education on an annual basis in fulfillment of assessed needs and based on the framework for governance leader-

ship. The continuing education sessions may be provided by ESCs or other registered providers.

(A) In a board member's first year of service, he or she shall receive at least ten hours of continuing education in fulfillment of assessed needs. Up to five of the required ten hours may be fulfilled through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor. The registered provider shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (g) of this section.

(B) Following a board member's first year of service, he or she shall receive at least five hours of continuing education annually in fulfillment of assessed needs. A board member may fulfill the five hours of continuing education through online instruction, provided that the training is designed and offered by a registered provider, incorporates interactive activities that assess learning and provide feedback to the learner, and offers an opportunity for interaction with the instructor. The registered provider shall determine the clock hours of training credit to be awarded for successful completion of an online course and shall provide verification of completion as required in subsection (g) of this section.

(C) A board president shall receive continuing education related to leadership duties of a board president as some portion of the annual requirement.

(4) Each school board member shall complete continuing education every two years on evaluating student academic performance.

(A) The purpose of the training on evaluating student academic performance is to provide research-based information to board members that is designed to support the oversight role of the board of trustees outlined in the TEC, §11.1515.

(B) A candidate for school board may complete the training up to one year before the candidate is elected. If a newly elected or appointed school board member did not complete this training in the year preceding the member's election, the member must complete the training within 120 days after election or appointment. A returning board member shall complete the training by the second anniversary of the completion of the trustee's previous training.

(C) An authorized provider for training on evaluating student academic performance is a provider who is registered pursuant to subsection (f) of this section and has demonstrated proficiency in the content required by subsection (b)(4)(E) of this section. Proficiency may be demonstrated by completing a TEA-approved train-the-trainer course and evaluation on the topic, by being certified as a Lone Star Governance coach, through a review of the provider's qualifications and course design, or through other means as determined by the commissioner of education.

(D) The training on evaluating student academic performance shall be at least three hours in length.

(E) The continuing education training required by this subsection shall include, at a minimum, the following:

(i) instruction in school board behaviors correlated to improved student outcomes with emphasis on inputs, outcomes, and collaborative student outcome goal setting;

(ii) instruction in progress monitoring to improve student outcomes with emphasis on progress monitoring practices, formative assessments, interim assessments, and summative assessments; and

(iii) instruction in state accountability with emphasis on the Texas Essential Knowledge and Skills, state assessment instruments administered under the TEC, Chapter 39, and the state accountability rating system.

(F) If the training is attended by an entire school board and its superintendent, includes a review of local school district data on student achievement, and otherwise meets the requirements of subsection (b)(2) of this section, the training may serve to meet a school board member's obligation to receive training under subsection (b)(2) and (4) of this section, as long as the training complies with the Texas Open Meetings Act.

(c) No continuing education shall take place during a school board meeting unless that meeting is called expressly for the delivery of board member continuing education. However, continuing education may take place prior to or after a legally called board meeting in accordance with the provisions of the Texas Government Code, §551.001(4).

(d) An ESC board member continuing education program shall be open to any interested person, including a current or prospective board member. A district is not responsible for any costs associated with individuals who are not current board members.

(e) A registration fee shall be determined by ESCs to cover the costs of providing continuing education programs offered by ESCs.

(f) A private or professional organization, school district, government agency, college/university, or private consultant shall register with the TEA to provide the board member continuing education required in subsection (b)(1)(C) and (2)-(4) of this section.

(1) The registration process shall include documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership.

(2) An updated registration shall be required of a provider of continuing education every three years.

(3) A school district that provides continuing education exclusively for its own board members is not required to register.

(4) An ESC is not required to register under this subsection.

(g) The provider of continuing education shall provide verification of completion of board member continuing education to the individual participant and to the participant's school district. The verification must include the provider's registration number.

(h) At least 50% of the continuing education required in subsection (b)(3) of this section shall be designed and delivered by persons not employed or affiliated with the board member's local school district. No more than one hour of the required continuing education that is delivered by the local district may utilize self-instructional materials.

(i) To the extent possible, the entire board shall participate in continuing education programs together.

(j) At the last regular meeting of the board of trustees before an election of trustees, the current president of each local board of trustees shall announce the name of each board member who has completed the required continuing education, who has exceeded the required hours of continuing education, and who is deficient in meeting the required continuing education as of the anniversary of the date of each board member's election or appointment to the board. The announcement shall state that completing the required continuing education is a basic obligation and expectation of any sitting board member under SBOE rule. The minutes of the last regular board meeting before an election

of trustees must reflect whether each trustee has met or is deficient in meeting the training required for the trustee as of the first anniversary of the date of the trustee's election or appointment. The president shall cause the minutes of the local board to reflect the announcement and, if the minutes reflect that a trustee is deficient in training as of the anniversary of his or her joining the board, the district shall post the minutes on the district's Internet website within 10 business days of the meeting and maintain the posting until the trustee meets the requirements.

(k) Annually, the SBOE shall commend those local board-superintendent teams that receive at least eight hours of the continuing education specified in subsection (b)(2) and (3) of this section as an entire board-superintendent team.

(l) Annually, the SBOE shall commend local board-superintendent teams that effectively implement the commissioner's trustee improvement and evaluation tool developed under the TEC, §11.182, or any other tool approved by the commissioner.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 28 TAC §3.3308(c)(2)(E) is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 8, 2018, issue of the Texas Register.)

The Commissioner of Insurance adopts amendments to 28 Texas Administrative Code §§3.3302 - 3.3308, 3.3312, 3.3316, 3.3317, and 3.3323 - 3.3325, and also adopts the repeal of 28 TAC §3.3318, relating to Medicare supplement policies. These amendments and repeal implement the most recent revisions to the National Association of Insurance Commissioner's (NAIC) Medicare supplement insurance model regulation to comply with the Medicare Access and CHIP Reauthorization Act of 2015, Public Law 114-10, at 42 U.S.C. §1395ss(z). Sections 3.3302 - 3.3305, 3.3312, 3.3316, 3.3317, and the repeal of 28 TAC §3.3318 are adopted without change to the text as proposed in the December 22, 2017, issue of the *Texas Register* (42 TexReg 7259). Sections 3.3306 - 3.3308 and 3.3323 - 3.3325, are adopted with nonsubstantive changes to the text as proposed, as described in the following paragraphs.

The department changed §3.3306(b) and (c) to capitalize "Standardized" and it changed §3.3306(b)(3)(A) to make "deductible" lowercase for consistency with the department's writing style.

The department changed §3.3306(b)(1)(A)(ii) and §3.3325(c)(8) to replace "which" with "that" for consistency with the department's current writing style. The department also changed the word "subchapter" to "title" in §3.3306(b)(1)(A)(iii) for consistency with the department's writing style.

The department changed 28 TAC §3.3306(c)(5)(F)(ii) to delete the 2017 Plan F high deductible amount of $2,200 and replace it with the 2018 Plan F high deductible amount of $2,240. The department also changed 28 TAC §3.3306(c)(5)(H)(ii) to delete the 2017 Plan G high deductible amount of $2,200 and replace it with the 2018 Plan G high deductible amount of $2,240. The department changed 28 TAC §3.3306(c)(5)(I)(x) to delete the 2017 Plan K out-of-pocket limit of $5,120 and replace it with the 2018 Plan K out-of-pocket limit of $5,240. The department changed 28 TAC §3.3306(c)(5)(J)(iii) to delete the references to 2017 Plan L and Plan K out-of-pocket limits of $2,560 and $5,120 and replace them with the 2018 Plan L and Plan K out-of-pocket limits of $2,620 and $5,240. These changes to 28 TAC §3.3306 are necessary to reflect the dollar amounts to be paid by Medicare, the plan, and the covered person for the 2018 calendar year.

The department changed §§3.3306(c)(6), 3.3307(g), 3.3307(g)(1)(C), 3.3308(c)(2)(E), 3.3323, 3.3325(c)(9), 3.3325(d) - (f), 3.3325(f)(7), 3.3325(g) and (h), and 3.3325(m)(6) and Figure 3.3308(c)(2)(E) to capitalize "Commissioner" for consistency with the department's current writing style.

The department changed §3.3307(d)(2)(B) - (D) to correct punctuation by removing periods that appeared in error.

The department changed 28 TAC §3.3308(c)(2)(E) to delete the reference to LHL 050 Rev. 12/17 and replace it with a reference to LHL 050 Rev. 06/18. This change is necessary because TDI has updated the contents of the form to show the dollar amounts to be paid by Medicare, the plan, and the covered person for the 2018 calendar year.

The department also changed Figure §3.3308(c)(2)(E) to correct nonsubstantive formatting and grammatical errors, including consistent use of hyphens within the term "out-of-pocket" and ensuring consistent capitalization of certain terms, such as "Plan F." The department revised the font size to size 12 throughout the Figure, which is necessary to conform to the requirements of §3.3308(c). This change necessitated additional page breaks, which the department combined with modification of paragraph and table spacing to improve readability. In addition, the department changed symbols and asterisks used within the *PLAN K* and *PLAN L* charts to more closely align with the NAIC model.

The department changed §3.3324(e)(1), (2), and (3) to insert spaces, for consistency with the department's current writing style.

The department changed §§3.3306(c)(1)(B), 3.3306(c)(5)(H), and 3.3308(c)(2)(E); and Figure §3.3308(c)(2)(E) in response to public comments, as described in the following paragraphs.

The department changed §3.3306(c)(1)(B) by moving the proposed phrase in §3.3306(c)(1)(B)(ii), "who first became eligible for Medicare before January 1, 2020," to the main body of the

text in §3.3306(c)(1)(B) to clarify that the requirement as provided in §3.3306(c)(1)(B) applies to both Plans C and F.

The department changed §3.3306(c)(5)(H) by revising the language to clarify that the Part B deductible is not an expense that would ordinarily be paid by Plan G. The department added language to clarify that the Standardized Medicare supplement Plan G with High Deductible must include 100 percent of the covered expenses following payment of the annual deductible set forth in §3.3306(c)(5)(H)(ii), but that it will not provide coverage for any portion of the Medicare Part B deductible. The language further states that the Medicare Part B deductible paid by a beneficiary will be considered an out-of-pocket expense in meeting the annual high cost deductible.

The department changed §3.3308(c)(2)(E) to require use of the revised outline of coverage form no later than July 1, 2019.

The department changed Figure §3.3308(c)(2)(E), revising the column heading in the *Benefit Chart of Medicare Supplement Plans Sold on or after June 1, 2020,* for Plans C and F to say "Medicare first eligible before 2020 only." The department also removed the checkmark for "skilled nursing facility coinsurance" in Plans A and B, because these plans do not provide this benefit. Additionally, the department removed the checkmark for the Medicare A deductible, because Plan A does not provide this benefit.

The department also replaced language that appears in the summary portion about *Plan G or High Deductible Plan G* for Part A and Part B with the wording used in the NAIC Model. As adopted, the language states that "out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This does not include the plan's separate foreign travel emergency deductible."

The department also changed the *PLAN G or HIGH DEDUCTIBLE Plan* G chart to make the column headings for home health care and foreign travel consistent with other benefits for Plan G. As adopted, they say "MEDICARE PAYS, [AFTER YOU PAY $[2,240] DEDUCTIBLE, **] PLAN PAYS, and [IN ADDITION TO [2,240] DEDUCTIBLE, **] YOU PAY."

REASONED JUSTIFICATION. The Medicare Access and CHIP Reauthorization Act (MACRA) was enacted on April 16, 2015. Starting on January 1, 2020, it prohibits the sale of Medicare supplement plans that cover Part B deductibles to a "newly eligible Medicare beneficiary."

A "newly eligible Medicare beneficiary" is defined under 42 U.S.C. §1395ss(z)(2) as an individual who: has attained age 65 on or after January 1, 2020; becomes eligible for Medicare due to age, disability, or end-stage renal disease on or after January 1, 2020, by reason of entitlement under 42 U.S.C. §426(b) or 42 U.S.C. §426-1; or who is deemed to be eligible for benefits under 42 U.S.C. §426(a). Plans C, F, and High Deductible F, which include coverage for the Part B deductible, will not be available to a newly eligible individual.

NAIC adopted revisions on August 29, 2016, to its NAIC Model Regulation to implement the MACRA requirements concerning Medicare supplement insurance. On September 1, 2017, the Department of Health and Human Services issued a notice in 82 Federal Register 169 recognizing the revised NAIC Model standards for regulation of Medicare supplement insurance for purposes of 42 U.S.C. §1395ss.

If a state's Medicare supplement program does not provide for the application and enforcement of the NAIC Model Standards and requirements in 42 U.S.C. §1395ss(b)(1), no Medicare supplement policy may be issued in that state, unless the policy has been certified by the Secretary of the United States Department of Health and Human Services as meeting minimum standards and requirements under the procedures established in 42 U.S.C. §1395ss(a)(1). Title 42 U.S.C. §1395ss(b)(1) provides that Medicare supplement policies issued in a state are deemed to meet the federal requirements if the state's program regulating Medicare supplement policies provides for the application of standards that are at least as stringent as those contained in the NAIC Model Regulation and if the state's requirements are equal to or more stringent than those in subsection 42 U.S.C. §1395ss(c)(2) - (5).

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Chapter 1652, the Commissioner must adopt reasonable rules necessary and proper to carry out Chapter 1652, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for Texas to retain certification as a state with an approved regulatory program for Medicare supplement insurance.

Insurance Code §1652.051 provides, in part, that the Commissioner must adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans. The standards are in addition to and must be in accordance with applicable laws of Texas; applicable federal law, rules, regulations, and standards; and any model rules and regulations required by federal law, including 42 U.S.C. §1395ss. The standards may include provisions relating to terms of renewability; benefit limitations, exceptions, and reductions; and exclusions required by state or federal law.

Insurance Code §1652.052(a) provides that the Commissioner must adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans. Insurance Code §1652.052(b) states that the standards for benefits and claim payments must include the requirements for certification of Medicare supplement benefit plans under 42 U.S.C. §1395ss. Based on state and federal law, amendments to §§3.3303, 3.3306, 3.3308, and 3.3312 are necessary to retain certification as a state with an approved regulatory program for Medicare supplement insurance.

Individuals issued a certificate in Texas may move for various reasons to a different state and that issuers typically adjust premium rates to reflect costs in a given geographic location. Therefore, amendments to 28 TAC §3.3306(b)(1)(E), relating to group Medicare supplement policies, provide that if an individual holds a Texas-issued certificate in a group Medicare supplement policy and the individual moves out of Texas, the issuer may replace the certificate with a certificate of the same standardized benefit plan type approved by the new state of residence, if the issuer acts uniformly in its treatment of certificate holders who move out of state. This change is intended to provide administrative simplification for issuers related to rate filings.

Insurance Code §1652.102(c) provides that the Commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios. The amendments to 28 TAC §3.3307(f), relating to refund or credit calculations, are necessary for both efficiency and consistency in reporting the required data.

A description of adopted changes to specific sections follows. Except for where the discussion notes that a change was made to the text as proposed, all the described changes were included as part of the proposed text.

Section 3.3302. The adoption updates a statutory citation. The adoption also adds subsection (b), derived from repealed 28 TAC §3.3318. Adopting these provisions in §3.3302 is more consistent with the subject matter of the applicability and scope of Insurance Code Chapter 1652. New §3.3302(b) states that policies and certificates delivered or issued for delivery before June 1, 2010, are subject to the laws and rules as they existed at the time the policy was delivered or issued for delivery, and those sections are continued in effect for that purpose.

Section 3.3303. The adoption adds a new definition to §3.3303 for a "2020 newly eligible individual" for consistency with how such an individual is defined under MACRA, 42 U.S.C. §1395ss(z)(2), and renumbers the remaining definitions as appropriate to reflect the addition of the new definition. The adoption also updates statutory citations in new paragraph (20) to reflect the nonsubstantive recodification of the Insurance Code.

Section 3.3304. The adoption updates Administrative Code citations in paragraph (11) to be consistent with §3.3306 as adopted.

Section 3.3305. The adoption updates Administrative Code citations in subsections (a) and (d) to be consistent with §3.3306 as adopted.

Section 3.3306. The adoption conforms §3.3306 to amendments made by MACRA that prohibit the sale of Medicare supplement plans that cover Part B deductibles to a newly eligible Medicare beneficiary.

The adoption adds a new subsection (a) and redesignates the subsections that follow it to reflect this change. The following descriptions address the redesignated subsections, unless stated otherwise.

New subsection (a)(1) clarifies that the standards and requirements of subsections (b) and (c) apply to all Medicare supplement policies or certificates delivered or issued for delivery to 2020 newly eligible individuals, with the exception of subsections (b)(3)(C), (c)(5)(C), (c)(5)(E), and (c)(5)(F). The adoption further clarifies that 2020 newly eligible individuals are only eligible to purchase standardized Medicare supplement benefit plans A, B, D, G, High Deductible G, K, L, M, and N. The adoption states that standardized Medicare supplement plans C, F, and High Deductible F may not be offered to 2020 newly eligible individuals.

The adoption further states in subsections (b) and (c) that benefit standards applicable to Medicare supplement policies and certificates issued or issued for delivery with an effective date before June 1, 2010, remain subject to the laws and rules in effect when the policy or certificate was delivered or issued for delivery. The adoption makes a correction to a citation in subsection (b)(1)(E)(iii) by changing "(iv)" to "(v)." This amendment is necessary because the previous was inconsistent with the citation reference in the NAIC Model Rule. The adoption adds new subsection (b)(1)(E)(vi), which provides that if an individual is a Texas certificate holder in a group Medicare supplement policy and the individual moves out of Texas where the certificate was issued, the issuer may replace the Texas certificate with a certificate of the same standardized benefit plan type, approved by the new state of residence, if the issuer treats all certificate holders who move out of state uniformly.

The adoption adds the words "G with High Deductible" in subsection (b)(2) and clarifies that (c)(1)(B) applies to each prospective policyholder and certificate holder who first became eligible for Medicare before January 1, 2020. The adoption adds new subsection (c)(5)(H) to provide the standardized plan requirements for Plan G with High Deductible. To streamline and simplify the rules, the adoption deletes previous subsections (c) and (d), concerning benefit standards for 1990 Standardized Medicare supplement benefit plans, policies, or certificates, and specific references to these plans and pre-standardized Medicare supplement benefit plans. However, as stated in adopted §3.3302(b), these plans remain subject to the laws and rules in effect when the policy or certificate was delivered or issued for delivery. For consistency with the new outline of coverage, the adoption updates deductible and out-of-pocket limit amounts to reflect the 2018 coverage levels, as published by Centers for Medicare & Medicaid Services. The adoption also updates Administrative Code citations to reflect the adopted redesignations within the section.

Section 3.3307. The adoption revises §3.3307(f) to state that an issuer must use the online data reporting form found on the department's website concerning calculations to electronically submit the required data no later than May 31st of each year. The adoption also replaces the previous Figure: 28 TAC §3.3307(f) with new Figure: 28 TAC §3.3307(f) to improve the clarity of the language and grammar within the form and to add a checkbox that enables an issuer with no data to report to automatically populate zeros in all relevant form fields. The adoption also updates the statutory citation in subsection (g) to reflect the nonsubstantive recodification of the Insurance Code.

Section 3.3308. The adoption deletes §3.3308(c)(2)(F), relating to Outline of Coverage form, relating to policies sold with an effective date for coverage before June 1, 2010, and on or after March 1, 1992, and repeals Form No. LHL 050 Rev. 12/04. The adoption amends subsection (c)(2)(E), relating to the Outline of Coverage form, Form No. LHL 050 Rev. 06/09, applicable to policies with an effective date for coverage of June 1, 2010, or later. The adoption also repeals LHL 050 Rev. 06/09 and creates an updated version of the form titled "LHL 050 Rev. 06/18."

New LHL 050 Rev. 06/18 includes disclosure provisions (provisions that were inadvertently excluded from LHL 050 Rev. 06/09) to address limitations and exclusions, refund of premium, and grievance procedures, which are consistent with subsections (c)(2)(B) - (D). The adopted form also reflects amendments to §3.3306 by including a new benefit chart of Medicare supplement plans sold on or after January 1, 2020, and by modifying the Plan G summary to reflect the new high deductible option.

As proposed, the adoption makes nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity. The adoption also updates an Administrative Code citation at subsection (a)(4)(C) to reflect §3.3306 as adopted. In order to provide adequate time for issuers to make changes to the outline of coverage and file new forms, consistent with LHL 050 Rev. 06/18, adopted §3.3308(c)(2)(E) indicates that issuers are not required to begin using the new form until July 1, 2019.

Section 3.3312. The adoption amends §3.3312(c) to clarify which products that 2020 newly eligible individuals are entitled to purchase under the guaranteed issue provisions.

Section 3.3316. The adoption updates a statutory citation to reflect the nonsubstantive recodification of the Insurance Code.

Section 3.3317. The adoption updates a statutory citation to reflect the nonsubstantive recodification of the Insurance Code.

Section 3.3318. The adoption repeals current §3.3318. Amendments to §3.3302(b) incorporate provisions similar to some of the provisions repealed in §3.3318, as previously described.

Section 3.3323. The adoption corrects a citation to include the full name of a section title and updates a statutory citation to reflect the nonsubstantive recodification of the Insurance Code.

Section 3.3324. The adoption deletes outdated language about enrollment before 1997. The adoption also updates an Administrative Code citation in subsection (d), consistent with adopted §3.3306.

The Commissioner also adopts the proposed amendments to 28 TAC §§3.3302 - 3.3308, 3.3312, 3.3316, 3.3317, and 3.3323 - 3.3325 to update outdated contact information and administrative and statutory citations, and to make other nonsubstantive editorial and formatting changes for consistency with current agency style.

This adoption includes provisions related to NAIC model rules, regulations, directives, or standards, and the department must consider whether authority exists to enforce or adopt NAIC model rules, regulations, directives, or standards under Insurance Code §36.004 and §36.007. The department has determined that Insurance Code §36.004 and §36.007 do not prohibit the adopted amendments because Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Chapter 1652, the Commissioner must adopt reasonable rules necessary and proper to carry out Chapter 1652. These rules include those adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for Texas to retain certification as a state with an approved regulatory program for Medicare supplement insurance.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received one written set of comments and no oral comments. UnitedHealthcare is in support of the proposal with changes. The department did not receive comments against the proposal.

Comment on §3.3306(b)(1)(E)(vi). The commenter supports adding §3.3306(b)(1)(E)(vi) to allow group Medicare supplement certificates to be replaced for Texas residents who move to another state.

Agency Response to Comment on §3.3306(b)(1)(E)(vi). The department appreciates the supportive comment.

Comment on §3.3306(c)(1)(B). The commenter suggests moving the proposed phrase in §3.3306(c)(1)(B)(ii) that states, "who first became eligible for Medicare before January 1, 2020," to the main body of the text in §3.3306(c)(1)(B) to clarify that the requirement as provided in §3.3306(c)(1)(B) applies to both Plans C and F.

Agency Response to Comment on §3.3306(c)(1)(B). The department agrees and has made the suggested change.

Comment on §3.3306(c)(5)(H). The commenter states that the Part B deductible is not an expense that would ordinarily be paid by Plan G, and because of this the commenter recommends adding language from Section 9.2(A)(4) of the NAIC Model to §3.3306(c)(5)(H) to read: "Plan G With High Deductible shall provide the benefits contained in subsection §3.3306(c)(5)(F) but shall not provide coverage for 100% or any portion of the Medicare Part B deductible; provided further, that the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible."

Agency Response to Comment on §3.3306(c)(5)(H). The department agrees with changing the language to clarify that the Part B deductible is not an expense that would ordinarily be paid by Plan G. However, the department does not agree with all of the suggested language. The department added language to make the following clarification by stating: "Standardized Medicare supplement Plan G with High Deductible must include 100 percent of the covered expenses following the payment of the annual deductible set forth in clause (ii) of this subparagraph, but will not provide coverage for any portion of the Medicare Part B deductible. The Medicare Part B deductible paid by the beneficiary will be considered an out-of-pocket expense in meeting the annual high cost deductible."

Comment on §3.3308(c)(2)(E). The commenter states that proposed §3.3308(c)(2)(E) requires insurers to use the December 2017 revision of the outline of coverage form no later than July 1, 2018. The commenter suggests a July 1, 2019, effective date to use the new outline of coverage form to more closely align with the January 1, 2020, plan changes.

Agency Response to Comment on §3.3308(c)(2)(E). The department agrees that use of the revised outline of coverage form should be more closely aligned with the January 1, 2020, plan changes. The department has changed §3.3308(c)(2)(E) to require use of the revised outline of coverage form to no later than July 1, 2019.

Comments on Figure §3.3308(c)(2)(E). The commenter suggests changes in the *Benefit Chart of Medicare Supplement Plans Sold on or after June 1, 2020.* The commenter states that the column heading for Plans C and F omitted the word "only" and should instead read "Medicare first eligible before 2020 only."

Agency Response to Comment on Figure §3.3308(c)(2)(E). The department agrees and has made the change.

Comments on Figure §3.3308(c)(2)(E). The commenter suggests additional changes in the *Benefit Chart of Medicare Supplement Plans Sold on or after June 1, 2020.* The commenter states that Plans A and B should not have a checkmark for skilled nursing facility coinsurance, as these plans do not provide this benefit. The commenter states that Plan A should not have a checkmark for the Medicare A deductible because Plan A does not provide this benefit.

Agency Response to Comment on Figure §3.3308(c)(2)(E). The department agrees and has made the changes.

Comments on Figure §3.3308(c)(2)(E). The commenter suggests replacing language that appears in the summary portion about Plan G or High Deductible Plan G for Part A and Part B with the wording used in the NAIC Model, because the Part B deductible is not an expense that would ordinarily be paid by Plan G.

Agency Response to Comment on Figure §3.3308(c)(2)(E). The department agrees and has made the changes. The language now states that "out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This

does not include the plan's separate foreign travel emergency deductible."

Comments on Figure §3.3308(c)(2)(E). The commenter suggests changes in the *PLAN G or HIGH DEDUCTIBLE Plan* G chart. The commenter states that the column headings for home health care and foreign travel should be consistent with other benefits for Plan G and read "MEDICARE PAYS, [AFTER YOU PAY $[2,240] DEDUCTIBLE, **] PLAN PAYS, and [IN ADDITION TO [2,240] DEDUCTIBLE, **] YOU PAY.

Agency Response to Comment on Figure §3.3308(c)(2)(E). The department agrees and has made the changes.

28 TAC §§3.3302 - 3.3308, 3.3312, 3.3316, 3.3317, 3.3323 - 3.3325

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §§3.3302 - 3.3308, 3.3312, 3.3316, 3.3317, and 3.3323 - 3.3325 under Insurance Code §§1652.005, 1652.051, 1652.052, 1652.102, 1652.151, 1652.152, and 36.001; and 42 U.S.C. §1395ss.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by Chapter 1652, the Commissioner must adopt reasonable rules necessary and proper to carry out Chapter 1652, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for Texas to obtain or retain certification as a state with an approved regulatory program.

Insurance Code §1652.051 provides, in part, that the Commissioner must adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans. The standards are in addition to and must be in accordance with applicable laws of Texas; applicable federal law, rules, regulations, and standards; and any model rules and regulations required by federal law, including 42 U.S.C. §1395ss. The standards may include provisions relating to terms of renewability; benefit limitations, exceptions, and reductions; and exclusions required by state or federal law.

Insurance Code §1652.052(a) provides that the Commissioner must adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans. Insurance Code §1652.052(b) states that the standards for benefits and claim payments must include the requirements for certification of Medicare supplement benefit plans under 42 U.S.C. §1395ss.

Insurance Code §1652.102(c) provides that the Commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios.

Insurance Code §1652.151 provides, in part, that the rules adopted under §1652.152 must include provisions and requirements that are at least equal to those required by federal law, including the rules, regulations, and standards adopted under 42 U.S.C. §1395ss.

Insurance Code §1652.152(a) provides that for full and fair disclosure in the sale of Medicare supplement benefit plans, a Medicare supplement benefit plan or certificate may not be delivered or issued for delivery in Texas unless an outline of coverage that complies with §1652.152 is delivered to the applicant when the applicant applies for the coverage. Insurance Code §1652.152(b) provides that the Commissioner by rule must prescribe the format and content of the outline of coverage required by §1652.152(a). The rules must address the style, arrangement, and overall appearance of the outline of coverage, including the size, color, and prominence of type and the arrangement of text and captions.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of Texas.

Title 42 U.S.C. §1395ss(a)(2)(A) provides, in part, that no Medicare supplemental policy may be issued in a state on or after the date specified, unless the state's regulatory program provides for the application and enforcement of the NAIC Model Standards and requirements.

§3.3306. Minimum Benefit Standards.

(a) Benefit standards for standardized Medicare supplement benefit plan policies or certificates issued to 2020 newly eligible individuals. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) provides that no policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. Benefit standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of subsections (b) and (c) of this section. All policies issued to a 2020 newly eligible individual, as defined in this subchapter, must comply with the following benefit standards:

(1) Benefit requirements. The standards and requirements of subsections (b) and (c) of this section apply to all Medicare supplement policies or certificates delivered or issued for delivery to 2020 newly eligible individuals, with the exception of subsections (b)(3)(C), (c)(5)(C), (c)(5)(E), and (c)(5)(F) of this section.

(2) Eligibility to purchase. A 2020 newly eligible individual is only eligible to purchase standardized Medicare supplement benefit plans A, B, D, G, High Deductible G, K, L, M, and N. Standardized Medicare supplement benefit plans C, F, and High Deductible F may not be offered to 2020 newly eligible individuals.

(b) Benefit standards for 2010 Standardized Medicare supplement benefit plan policies or certificates issued or issued for delivery with an effective date for coverage on or after June 1, 2010. This section specifies the minimum standards applicable to all Medicare supplement policies or certificates issued or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage meets the applicable standards in paragraphs (1) - (3) of this subsection. No issuer may offer or issue any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued or issued for delivery with an effective date before June 1, 2010, remain subject to the laws and rules in effect when the policy or certificate was delivered or issued for delivery. These are minimum standards and do not prevent the inclusion of other provisions or benefits that are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this subchapter, Insurance Code Chapter 1652, and any other applicable law.

(A) A Medicare supplement policy or certificate must not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(i) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer must waive any time applicable to preexisting condition waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent the time was spent under the original policy.

(ii) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in effect for at least six months, the replacing policy or certificate must not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits.

(iii) If a Medicare supplement policy or certificate is issued or issued for delivery to an applicant who qualifies under §3.3312(b) of this title (relating to Guaranteed Issue for Eligible Persons) or §3.3324(a) of this title (relating to Open Enrollment), the issuer must reduce the period of any preexisting condition exclusion as required by §3.3312(a)(2) of this title and §3.3324(c) and (d) of this title.

(B) A Medicare supplement policy or certificate may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(C) A Medicare supplement policy or certificate must provide that benefits designed to cover cost-sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(D) A Medicare supplement policy or certificate may not:

(i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(ii) be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) Each Medicare supplement policy must be guaranteed renewable and must comply with the provisions of clauses (i) - (vi) of this subparagraph.

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual.

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided in clause (v) of this subparagraph, the issuer must offer certificate holders an individual Medicare supplement policy that, at the option of the certificate holder:

(I) provides for continuation of the benefits contained in the group policy; or

(II) provides for benefits that otherwise meet the requirements of this subparagraph.

(iv) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer must:

(I) offer the certificate holder the conversion opportunity described in clause (iii) of this subparagraph; or

(II) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(vi) If an individual is issued a certificate in Texas in a group Medicare supplement policy and the individual moves out of the state, the issuer may replace the Texas certificate with a certificate of the same standardized benefit plan type, approved by the new state of residence, if the issuer acts uniformly in its treatment of certificate holders who move out of Texas.

(F) Termination of a Medicare supplement policy or certificate must be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned on the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits must not be considered in determining a continuous loss.

(G) A Medicare supplement policy or certificate must comply with clauses (i) - (iv) of this subparagraph:

(i) A Medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate will be suspended at the request of the policyholder or certificate holder for the period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to that assistance.

(ii) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate must be automatically reinstituted effective as of the date of termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Each Medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder or certificate holder if the policyholder or certificate holder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy must be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder or certificate holder provides notice of loss of coverage within 90 days after the date of the loss.

(iv) Reinstitution of coverages must comply with subclauses (I) - (III) of this clause.

(I) Reinstitution of coverage must not provide for any waiting period with respect to treatment of preexisting conditions.

(II) Reinstitution of coverage must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension.

(III) Reinstitution of coverage must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for basic (core) benefits common to Medicare supplement insurance benefit plans A, B, C, D, F, F with High Deductible, G, G with High Deductible, M, and N. Every issuer of Medicare supplement insurance benefit plans must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not instead of it. These plans include:

(A) coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(B) coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(C) on exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(E) coverage for the coinsurance amount or, in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount of Medicare eligible expenses under Part B, regardless of hospital confinement, subject to the Medicare Part B deductible;

(F) coverage of cost sharing for all Part A Medicare-eligible hospice care and respite care expenses.

(3) Standards for additional benefits. The following additional benefits must be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, G with High Deductible, M, and N as provided by subsection (c) of this section.

(A) Medicare Part A deductible:

(i) coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period; or

(ii) coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(B) Skilled nursing facility care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(C) Medicare Part B deductible: coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(D) One hundred percent of the Medicare Part B excess charges: coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(E) Medically necessary emergency care in a foreign country: coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(c) Standard Medicare supplement benefit plans for 2010 Standardized Medicare supplement benefit plan policies or certificates issued or issued for delivery with an effective date for coverage on or after June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates issued or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued or issued for delivery with an effective date for coverage before June 1, 2010, remain subject to the laws and rules in effect when the policy or certificate was delivered, or issued for delivery.

(1) An issuer of a Medicare supplement policy or certificate must comply with subparagraphs (A) and (B) of this paragraph:

(A) An issuer must make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as defined in subsection (b)(2) of this section.

(B) If an issuer makes available any of the additional benefits described in subsection (b)(3) of this section, or offers standardized benefit Plans K or L (as described in paragraph (5)(I) and (J) of this subsection), then the issuer must make available to each prospective policyholder and certificate holder who first became eligible for Medicare before January 1, 2020, in addition to a policy form or certificate form with only the basic (core) benefits as described in subparagraph (A) of this paragraph, a policy form or certificate form containing either:

(i) standardized benefit Plan C (as described in paragraph (5)(C) of this subsection); or

(ii) standardized benefit Plan F (as described in paragraph (5)(E) of this subsection).

(2) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this subsection may be offered for sale in this state, except as may be permitted in paragraph (6)

of this subsection and in §3.3325 of this title (relating to Medicare Select Policies, Certificates, and Plans of Operation).

(3) Benefit plans must be uniform in structure, language, and format, as well as designation, to the standard benefit plans listed in this paragraph and conform to the definitions in §3.3303 of this title (relating to Definitions). Each benefit plan must be structured in accordance with the format provided in subsection (b)(2) and (b)(3) of this section or, in the case of Plans K or L, in accordance with the format provided in paragraph (5)(I) or (J) of this subsection, and list the benefits in the order shown. For purposes of this subsection, "structure, language, and format" means style, arrangement, and overall content of a benefit.

(4) In addition to the benefit plan designations required in paragraph (3) of this subsection, an issuer may use other designations to the extent permitted by law.

(5) The make-up of 2010 Standardized Benefit Plans is as specified in subparagraphs (A) - (L) of this paragraph.

(A) Standardized Medicare supplement benefit Plan A must include only the following: The basic (core) benefits as defined in subsection (b)(2) of this section.

(B) Standardized Medicare supplement benefit Plan B must include only the following: The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible as defined in subsection (b)(3)(A)(i) of this section.

(C) Standardized Medicare supplement benefit Plan C must include only the following: The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), (C), and (E) of this section, respectively.

(D) Standardized Medicare supplement benefit Plan D must include only: The basic (core) benefits (as defined in subsection (b)(2) of this section), plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), and (E) of this section, respectively.

(E) Standardized Medicare supplement (regular) Plan F must include only the following: The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), (C), (D), and (E) of this section, respectively.

(F) Standardized Medicare supplement Plan F with High Deductible must include 100 percent of covered expenses following the payment of the annual deductible set forth in clause (ii) of this subparagraph.

(i) The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), (C), (D), and (E) of this section, respectively.

(ii) The annual deductible in Plan F with High Deductible must consist of out-of-pocket expenses, other than premiums, for services covered by regular Plan F, and must be in addition to any other specific benefit deductibles. The basis for the deductible is $2,240 for 2018, and will be adjusted annually by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(G) Standardized Medicare supplement benefit Plan G must include only the following: The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), (D), and (E), respectively. Effective January 1, 2020, Plan G with a High Deductible, as described in subsection (c)(5)(H), may be offered to any individual who is eligible for Medicare before January 1, 2020.

(H) Standardized Medicare supplement Plan G with High Deductible must include 100 percent of the covered expenses following the payment of the annual deductible set forth in clause (ii) of this subparagraph, but will not provide coverage for any portion of the Medicare Part B deductible. The Medicare Part B deductible paid by the beneficiary will be considered an out-of-pocket expense in meeting the annual high cost deductible.

(i) The basic (core) benefits as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), (D), and (E), respectively.

(ii) The annual deductible in Plan G with High Deductible must consist of out-of-pocket expenses, other than premiums, for services covered by regular Plan G, and must be in addition to any other specific benefit deductibles. The basis for the deductible is $2,240 for 2018, and will be adjusted annually by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(I) Standardized Medicare supplement Plan K must include only the following:

(i) Part A hospital coinsurance, 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(ii) Part A hospital coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(iii) Part A hospitalization after 150 days: On exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable PPS rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(iv) Medicare Part A deductible: Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(v) Skilled nursing facility care: Coverage for 50 percent of the coinsurance amount for each day used from the 21st

day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vi) Hospice care: Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vii) Blood: Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(viii) Part B cost sharing: Except for coverage provided in clause (ix) of this subparagraph, coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(ix) Part B preventive services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(x) Cost sharing after out-of-pocket limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $5,240 in 2018, indexed each year by the appropriate inflation adjustment specified by the Secretary.

(J) Standardized Medicare supplement Plan L must include only the following:

(i) the benefits described in subparagraph (I)(i), (ii), (iii), and (ix) of this paragraph;

(ii) the benefit described in subparagraph (I)(iv), (v), (vi), (vii), and (viii) of this paragraph, but substituting 75 percent for 50 percent; and

(iii) the benefit described in subparagraph (I)(x) of this subsection, but substituting $2,620 for $5,240.

(K) Standardized Medicare supplement Plan M must include only the following: The basic (core) benefit as defined in subsection (b)(2) of this section, plus 50 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(ii), (B), and (E) of this section, respectively.

(L) Standardized Medicare supplement Plan N must include only the following: The basic (core) benefit as defined in subsection (b)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (b)(3)(A)(i), (B), and (E) of this section, respectively, with copayments in the following amounts:

(i) the lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and

(ii) the lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment must be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits may not include an outpatient prescription drug benefit. New or innovative benefits may not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

§3.3307. Loss Ratio Standards and Refund or Credit of Premiums.

(a) Minimum aggregate loss ratio standard. A Medicare supplement individual or group policy form may not be delivered or issued for delivery unless the individual or group policy form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregated benefits (not including anticipated refunds or credits) provided under the individual policy form or group policy form, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by an HMO on a service, rather than reimbursement, basis and earned premiums for the applicable period, not including any changes in additional reserves and in accordance with generally accepted actuarial principles and practices:

(1) at least 75 percent of the aggregate amount of premiums earned in the case of group policies; or

(2) at least 65 percent of the aggregate amount of premiums earned in the case of individual policies.

(b) HMO loss ratio standard. An HMO loss ratio, where coverage is provided on a service rather than reimbursement basis, must be calculated on the basis of incurred claims experience or incurred health care expenses and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by an HMO may not include:

(1) home office and overhead costs;

(2) advertising costs;

(3) commissions and other acquisition costs;

(4) taxes;

(5) capital costs;

(6) administrative costs; and

(7) claims processing costs.

(c) Calendar-year experience loss ratio standard. For the most recent calendar year, the ratio of incurred losses to earned premiums for all policies or certificates that have been in force for three years or more, as of December 31st of the most recent year, must be equal to or greater than:

(1) at least 75 percent in the case of group policies; and

(2) at least 65 percent in the case of individual policies.

(d) Filing of rates and rating schedules. All filings of rates and rating schedules must demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions must also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards. For individual or group policies issued before March 1, 1992, the provisions of

paragraph (3) of this subsection must be met with respect to expected claims in relation to premiums. For purposes of submitting a rate filing under this section, policy forms, whether for open or closed blocks of business, providing for similar benefits must be combined. But for purposes of the required combination set out in this section, issuers may distinguish between policy forms providing for similar benefits for individuals 65 years of age or over and policy forms providing for similar benefits for individuals under age 65. Once policy forms have been combined, they remain so for all rating purposes. When forms have been combined, a rate revision request must not differentiate between the experience of the individual forms. Where significant inconsistencies between rate levels exist among forms providing similar benefits, some deviation in rate revision must be allowed to reduce the significant inconsistencies.

(1) Each Medicare supplement policy or certificate form must be accompanied, on submission for approval, by an actuarial memorandum. The memorandum must be prepared and signed by a qualified actuary in accordance with generally accepted actuarial principles and practices, and must contain the information listed in the following subparagraphs:

(A) the form number that the actuarial memorandum addresses;

(B) a brief description of benefits provided;

(C) a schedule of rates to be used;

(D) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;

(E) a statement of what experience base will be used in future rate adjustments;

(F) a certification that the anticipated aggregate loss ratio is at least 65 percent (for individual coverage) or at least 75 percent (for group coverage), which should include a statement of the period over which the aggregate loss ratio is expected to be realized;

(G) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period during which the aggregate loss ratio is to be realized; and

(H) a certification that the premiums are reasonable in relation to the benefits provided.

(2) Subsequent rate adjustment filings, except for those rates filed solely due to a change in the Part A calendar year deductible, must also provide an actuarial memorandum, prepared by a qualified actuary in accordance with generally accepted actuarial principles and practices, which must contain the following information:

(A) the form number addressed by the actuarial memorandum;

(B) a brief description of benefits provided;

(C) a schedule of rates before and after the rate change;

(D) a statement of the reason and basis for the rate change;

(E) a demonstration and certification by the qualified actuary to show that the past plus future expected experience after the rate change, will result in an aggregate loss ratio equal to, or greater than, the required minimum aggregate loss ratio;

(i) this rate change and demonstration must be based on the experience of the named form in Texas only, if that experience is fully credible, as set out in paragraph (3) of this subsection;

(ii) this rate change and demonstration must be based on experience of the named form nationwide, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used nationwide and the Texas experience is not fully credible;

(iii) this rate change and demonstration must be based on experience of the named form in Texas only, with credibility factors as set out in paragraph (3) of this subsection applied, if the named form is used in Texas only and the Texas experience is not fully credible;

(F) for policies or certificates in force less than three years, a demonstration to show that the third-year loss ratio is expected to be equal to or greater than the applicable percentage; and

(G) a certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided.

(3) For purposes of this subsection, if a group or individual policy form has 2,000 or more policies in force, then full credibility (100 percent) must be given to the experience. If fewer than 500 policies are in force, then no credibility (0 percent) must be given to the experience. The principle of linear interpolation must be used for in force numbers between 500 and 2,000. For group policy forms, the reference in this paragraph to the number of in force policies means the number of in force certificates under group policies. For purposes of this section, "in force" means either the average number of policies in force for the experience period used to support the need for a rate revision, or the number of policies in force as of the ending date of the experience period used to support the need for a rate revision. Once an issuer makes a decision as to which definition it will apply to a particular policy form, the decision is irrevocable. An issuer may submit specific alternate credibility standards to the department for consideration. In order for an alternate standard of credibility to be acceptable for application, the issuer must demonstrate that the standards are based on sound actuarial principles, and that the resulting loss ratios are in substantial compliance with the requirements of subsections (a), (b), and (c) of this section.

(4) For individual policies issued before March 1, 1992, the expected claims in relation to premiums must meet:

(A) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) a loss ratio of at least 65 percent when combined with actual experience beginning with June 1, 1996, to date; and

(C) a loss ratio of at least 65 percent over the entire future period for which the rates are computed to provide coverage.

(e) Annual filing of premium rates required. Every issuer of Medicare supplement policies and certificates issued before or after March 1, 1992, in this state must file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums, for the most recent calendar year broken down by calendar year of issue or by policy duration, for purposes of demonstrating that the issuer is in compliance with the loss ratio standards and for approval by the department in accordance with the filing requirements of this section and the requirements of §3.3323 of this title (relating to Increases to Premium Rates). The supporting documentation must also demonstrate, in accordance with actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration must exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage must be demonstrated for policies or certifi-

cates in force less than three years. The annual filing requirements in this subsection must be as follows:

(1) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each individual form with business in force in Texas;

(2) the NAIC Medicare supplement experience exhibit, which summarizes the experience of each group form with business in force in Texas;

(3) rates and rating schedules for each form with business in force in Texas;

(4) a certification by the qualified actuary that the policies or certificates in force less than three years are anticipated to produce a third-year loss ratio that is greater than or equal to the applicable loss ratio percentage; and

(5) a certification by the qualified actuary that the expected losses in relation to premiums over the entire period for which the policy is rated comply with the required minimum aggregate loss ratio standard.

(f) Refund or credit calculation. An issuer must use the online reporting form found on the department's website at www.tdi.texas.gov and electronically submit the data required by this section, which is contained in Figure: 28 TAC §3.3307(f) of this section. Issuers must submit the report to the department no later than May 31 of each year. Figure: 28 TAC §3.3307(f)

(1) If, on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation must be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year must be excluded.

(2) A refund or credit will be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund must include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event may it be less than the average rate of interest for 13-week treasury notes. A refund or credit against premiums due must be made by September 30 following the experience year on which the refund or credit is based.

(3) For an individual or group policy or certificate issued before March 1, 1992, the issuer, for purposes of complying with this subsection, must make the refund or credit calculation separately for all individual policies combined and all group policies combined for experience after June 1, 1996.

(g) Premium adjustments to conform with minimum standards for loss ratios. As soon as practicable, but before the effective date of enhancements to Medicare benefits, every issuer of Medicare supplement insurance policies, contracts, or coverage in this state must file with the Commissioner, in accordance with the applicable filing procedures of this state, the items required in paragraphs (1) and (2) of this subsection.

(1) Issuers must file the appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or contracts. Documents necessary to justify the adjustment must accompany the filing.

(A) Every issuer of Medicare supplement insurance or benefits to a resident of this state under Insurance Code Chapter 1652 must make premium adjustments:

(i) necessary to produce an expected loss ratio under the policy or contract that will conform with the minimum loss ratio standards for Medicare supplement policies; and

(ii) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premium by the issuer for the Medicare supplement insurance policies or contracts.

(B) No premium adjustment that would modify the loss ratio experience under the policy, other than the adjustments described in this subsection, should be made with respect to a policy at any time other than on its renewal date or anniversary date.

(C) If an issuer fails to make premium adjustments that are acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare must be filed. The riders, endorsements, or policy forms must provide a clear description of the Medicare supplement benefits provided by the policy or contract.

(h) Maintenance of data. Incurred claims and earned premium experience must be maintained for each policy form with business in force in Texas, by calendar year of issue, and must be made available to the department.

§3.3308. Required Disclosure Provisions.

(a) General rules.

(1) Medicare supplement policies and certificates must include a renewal or continuation provision. The language or specifications of the renewal or continuation provision must be consistent with the type of contract issued. The provision must be appropriately captioned, appear on the first page of the policy, and include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the age of the policyholder.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the policyholder, or by which the issuer exercises a specifically reserved right under a Medicare supplement policy, or by which the issuer is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy must require signed acceptance by the policyholder. After the date of issue of the policy or certificate, any rider or endorsement that increases benefits or coverage with concomitant increase in premium during the policy term must be agreed to in writing and signed by the policyholder unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or unless the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the additional premium charge must be set forth in the policy.

(3) Medicare supplement policies may not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or similar words and phrases.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions:

(A) the limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations;"

(B) the policy or certificate must define the term "preexisting condition" and must provide an explanation of the term in its accompanying outline of coverage; and

(C) the policy or certificate must include a provision explaining the reduction of the preexisting condition limitation for individuals who qualify under §3.3306(b)(1)(A) of this title (relating to Minimum Benefit Standards), §3.3312(a)(2) of this title (relating to Guaranteed Issue for Eligible Persons), or §3.3324(c) and (d) of this title (relating to Open Enrollment).

(5) Medicare supplement policies and certificates must have a notice prominently printed on the first page or attached to the first page stating in substance that the policyholder or certificate holder has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies, certificates, or subscriber contracts that provide hospital or medical-expense coverage on an expense-incurred or indemnity basis, to persons eligible for Medicare must provide to those applicants a Guide to Health Insurance for People with Medicare (Guide) in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services in no smaller than 12-point type.

(A) For purposes of this section, "form" means the language, format, style, type size, type proportional spacing, bold character, and line spacing.

(B) If a Guide incorporating the latest statutory changes is not available from a government agency, companies may comply with this provision by modifying the latest available Guide to the extent required by applicable law.

(C) Except as provided in this section, delivery of the Guide must be made whether or not any policies, certificates, subscriber contracts, or evidences of coverage are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this regulation.

(D) Except in the case of direct response issuers, delivery of the Guide must be made to the applicant at the time of application, and acknowledgment of receipt of the Guide must be obtained from the applicant by the issuer. Issuers must deliver the Guide to the applicant for a direct response Medicare supplement policy on request, but not later than at the time the policy is delivered.

(7) Except as otherwise provided in this section, the terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around," and similar words or phrases may not be used unless the policy is issued in compliance with §3.3306 of this title.

(b) Outline of coverage requirements for Medicare supplement policies.

(1) Issuers of Medicare supplement coverage in this state must provide an outline of coverage to all applicants, including certificate holders under group policies, at the time application is presented to the prospective applicant and, except for direct-response policies, must obtain an acknowledgment of receipt of the outline from the applicant.

(2) If a Medicare supplement policy or certificate is issued on a basis that would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany the policy or certificate when it is delivered. The outline of coverage must contain the following statement in no less than 12-point type, immediately above the company name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c) Form for outline of coverage. In providing outlines of coverage to applicants under the requirements of subsection (b)(1) of this section, insurers must use a form that complies with the requirements of this subsection. The outline of coverage must contain each of the following four parts in the following order: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage must be in the language and format prescribed in paragraphs (1) and (2) of this subsection in no less than 12-point type.

(1) All plans must be shown on the cover page, and the plans that are offered by the issuer must be prominently identified. Premium information for plans that are offered must be shown on the cover page or immediately following the cover page and must be prominently displayed. The premium and mode must be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant must be illustrated.

(2) The items in subparagraphs (A) - (C) of this paragraph must be included in the outline of coverage in addition to the items specified in the plan-specific outline-of-coverage forms.

(A) Dollar amounts that are shown in parentheses for each of the plan-specific charts on the following pages are for the calendar year in which the charts were published. Issuers must, for each plan offered, appropriately complete outline-of-coverage-chart statements about amounts to be paid by Medicare, the plan, and the covered person by replacing the amount in parentheses with the dollar amount corresponding to each covered service for the applicable calendar year benefit period.

(B) The outline of coverage must include an explanation of any limitations and exclusions. Those limitations and exclusions resulting from Medicare program provisions may be disclosed by reference and need not be explained in their entirety. All limitations and exclusions related to preexisting conditions and all other limitations and exclusions not resulting from Medicare regulations must be fully explained in the outline of coverage.

(C) The outline of coverage must include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium on the death of an insured or on the surrender of the policy or certificate. If the policy contains these provisions, a description of the provisions must be included.

(D) The outline of coverage for Medicare Select policies or certificates must include information regarding grievance procedures that meet the requirements of §3.3325(m) of this title (relating to Medicare Select Policies, Certificates, and Plans of Operation).

(E) The Commissioner adopts the Outline of Coverage form, LHL 050 Rev. 06/18. This form contains a chart of benefits for each of the standard Medicare supplement plans and required disclosures applicable to policies sold with an effective date for coverage of June 1, 2010, or later. Issuers must begin using form LHL 050 Rev. 06/18 no later than July 1, 2019.
Figure: 28 TAC §3.3308(c)(2)(E)

(d) Notice requirements.

(1) As soon as practicable, but no later than 30 days before the annual effective date of any Medicare benefit changes, every is-

suer providing Medicare supplement coverage to a resident of this state must notify its policyholders, contract holders, and certificate holders of modifications it has made to Medicare supplement insurance policies, contracts, or certificates. The notice must:

(A) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy, contract, or certificate; and

(B) inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments must be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notice may not contain or be accompanied by any solicitation.

(4) Issuers must comply with any notice requirements of the MMA.

§3.3323. Increases to Premium Rates.

Premium rates, rating schedules, and supporting documentation for a Medicare supplement policy or certificate to be used in this state must be filed with the department and approved by the Commissioner. Any request for an increase to rates for Medicare supplement policies or certificates issued before or after March 1, 1992, is subject to review by and hearing before the Commissioner if one or more of the following conditions, as determined by an actuary for the department, is present:

(1) The increase, exclusive of any increase occasioned by changes in the laws regulating Medicare supplement coverages, is not necessary to maintain an anticipated lifetime loss ratio at least equal to the minimum that is required by statute and set out in §3.3307 of this title (relating to Loss Ratio Standards and Refund or Credit of Premiums).

(2) An increase to premium has been effected on the same block or blocks of business within the preceding 12 months.

(3) An increase to premium would result in unfair discrimination, as provided in Insurance Code Chapter 544, between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for a policy or contract.

(4) An increase to premium would result in the benefits offered under the policy form to be unreasonable in relation to the premiums charged.

(5) An increase to premium would have the practical effect of altering the rating structure of the policy form to which it is applied, or would create a new set of rating criteria under the policy form.

(6) A contemplated increase to premium has the practical effect of resulting in a series of planned future increases to premium rather than a one-time increase.

§3.3324. Open Enrollment.

(a) No issuer may deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for a policy or certificate is submitted before or during the six-month period beginning with the first day of the first month in which an individual is first enrolled for benefits under Medicare Part B. No issuer may engage in a premium rating practice that results in higher premiums for any policy solely because the policy is issued under the provisions of this section. For individuals 65 years of age or older when first enrolled for benefits under Medicare Part B who apply for Medicare supplement coverage under this subsection, each Medicare supplement policy and certificate currently available from an issuer must be made available to all applicants without regard to age.

(b) The provisions of paragraphs (1) and (2) of this subsection apply to Medicare supplement issuers with respect to persons who qualify for Medicare before attaining 65 years of age.

(1) An issuer must comply with the first two sentences of subsection (a) of this section with respect to a person who:

(A) qualifies for Medicare before attaining 65 years of age, who first enrolls for benefits under Medicare Part B on or after January 1, 1997, and who applies for a Medicare supplement policy or certificate during the period of eligibility described in subsection (a) of this section; or

(B) enrolled in Medicare Part B before attaining 65 years of age, who applies for a Medicare supplement policy or certificate upon attaining 65 years of age, during the period of eligibility described in subsection (a) of this section that would apply if the person first enrolled in Medicare Part B on attaining 65 years of age.

(2) An issuer must make available, at a minimum, Plan A of the standard Medicare supplement plans to individuals who qualify under this subsection.

(c) If an applicant qualifies under subsection (a) of this section, is 65 years of age or older, and submits an application during the period referenced in subsection (a) of this section and, as of the date of application:

(1) has had a continuous period of creditable coverage of at least six months, the issuer may not exclude benefits based on a preexisting condition; or

(2) has had a continuous period of creditable coverage that is less than six months, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date.

(d) Except as provided in subsection (c) of this section, §3.3312 of this title (relating to Guaranteed Issue for Eligible Persons), and §3.3306(b)(1)(A) of this title (relating to Minimum Benefit Standards), subsection (a) of this section may not be construed as preventing the exclusion of benefits under a policy during the first six months based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

(e) The following examples illustrate the application of subsection (c)(1) and (2) of this section, as prescribed by the Secretary:

(1) Individual A--" No preexisting condition exclusion period. Relevant creditable coverage history: Individual A had coverage under an individual policy for four months beginning on May 1, 1998, through August 31, 1998, followed by a gap in coverage of 61 days until October 31, 1998. Individual A had coverage under an individual health plan beginning on November 1, 1998, for three months through January 31, 1999, followed by a gap in coverage of 59 days or until March 31, 1999, on which date Individual A submitted an application for a Medicare supplement policy. Under this example, the Medicare supplement issuer may not apply a preexisting condition exclusion period because Individual A has seven months of creditable coverage without a gap in coverage greater than 63 days.

(2) Individual B--" Subject to a three-month preexisting condition exclusion period. Relevant creditable coverage history: Individual B is covered under an individual health insurance policy for one month beginning May 1, 1998, through May 31, 1998, followed by a gap in coverage of 61 days from June 1, 1998, through July 31, 1998. On August 1, 1998, Individual B is covered under an association health plan for two months through September 30, 1998, followed by a gap in coverage of 31 days or until October 31, 1998, on which date Individual B submitted an application for Medicare supplement coverage. Individual B has three months of creditable coverage. Under this example, the issuer of a Medicare supplement policy must give Individual B a three-month credit against any preexisting condition exclusion period.

(3) Individual C--" Subject to a six-month preexisting condition exclusion period. Relevant creditable coverage history: Individual C is covered under an individual health insurance policy for one month beginning May 1, 1998, through May 31, 1998, followed by a gap in coverage of 61 days from June 1, 1998, through July 31, 1998. On August 1, 1998, Individual C is covered under an association health plan for two months through September 30, 1998, followed by a gap in coverage of 64 days or until November 4, 1998, on which date Individual C submitted an application for Medicare supplement coverage. Individual C has a gap in coverage of greater than 63 days. As a result, under this example, the Medicare supplement issuer can fully apply the preexisting condition exclusion provision to Individual C.

(f) Invitation to contract advertisements, as defined in §21.113(b) of this title (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising), must include the following statement: "Benefits and premiums under this policy may be suspended for up to 24 months if you become entitled to benefits under Medicaid. You must request that your policy be suspended within 90 days of becoming entitled to Medicaid. If you lose (are no longer entitled to) benefits from Medicaid, this policy can be reinstated if you request reinstatement within 90 days of the loss of such benefits and pay the required premium."

§3.3325. Medicare Select Policies, Certificate, and Plans of Operations.

(a) This section applies to Medicare Select policies, certificates, and plans of operation, as defined in this section.

(b) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(c) The following words and terms, when used in this section, have the following meanings, unless the context indicates otherwise. These words and terms must be defined and included in all Medicare Select policies, certificates, and plans of operation.

(1) Complaint--Any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) Emergency care--Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(3) Grievance--Dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(4) Medicare Select issuer--An issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(5) Medicare Select policy or Medicare Select certificate--A Medicare supplement policy or certificate, respectively that contains restricted network provisions.

(6) Network provider--A provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits covered under a Medicare Select policy.

(7) Nonnetwork provider--A provider of health care, or a group of providers of health care, that has not entered into a written agreement with the issuer to provide benefits covered under a Medicare Select policy.

(8) Restricted network provisions--Any provision that conditions the payment of benefits, in whole or in part, on the use of network providers.

(9) Service area--The geographic area approved by the Commissioner as part of the plan of operation or amended plan of operation, within which an issuer is authorized to offer a Medicare Select policy.

(d) The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, under this section and the Omnibus Budget Reconciliation Act (OBRA) of 1990, §4358, if the Commissioner finds that the issuer has satisfied all of the requirements of this subchapter.

(e) A Medicare Select issuer may not issue a Medicare Select policy or certificate in this state until the Commissioner approves its plan of operation. A Medicare Select issuer may not file a Medicare Select policy under Insurance Code Chapter 1701, Subchapter B, until the Commissioner has approved its plan of operation.

(f) A Medicare Select issuer must file a proposed plan of operation with the department, the form and content of which is subject to approval by the Commissioner. The plan of operation must contain, at a minimum, the information in paragraphs (1) - (7) of this subsection, and at the time of submission must have a form number printed or typed on the lower left hand corner of the face page.

(1) The plan must contain evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration of each of the items referenced in subparagraphs (A) - (E) of this paragraph.

(A) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care must reflect usual practice in the local area. Geographic availability must reflect the usual travel times within the community.

(B) The number of network providers in the service area must be documented by credible statistics to be sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals.

(C) Written agreements with network providers describing specific responsibilities must be included.

(D) Emergency care availability 24 hours per day and seven days a week must be demonstrated.

(E) In the case of covered services subject to a restricted-network provision and that are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual covered under a Medicare Select policy or certificate. This subparagraph does not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A clear description of the service area must be provided by narrative statement or a map.

(3) The grievance procedure used must be described.

(4) The quality assurance program must be described, including:

(A) the formal organizational structure;

(B) the written criteria for selection, retention, and removal of network providers; and

(C) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) Network providers must be listed and described by specialty.

(6) Copies of the written information proposed to be used by the issuer to comply with subsection (k) of this section must be provided.

(7) Any other information requested by the Commissioner must be provided.

(g) A Medicare Select issuer must file any proposed changes to the plan of operation, except for changes to the list of network providers, with the Commissioner 60 days before implementing the changes. Changes will be considered approved by the Commissioner after 30 days unless specifically disapproved or unless the issuer requests an extension of the 30-day period and the Commissioner grants the requested extension.

(h) An updated list of network providers must be filed with the Commissioner at least quarterly. If there is no change to the list of network providers within a particular calendar quarter, correspondence indicating no change from the prior reporting period to the current reporting period must, at a minimum, be filed to meet the reporting requirements of this subchapter.

(i) A Medicare Select policy or certificate may not restrict payment for covered services provided by nonnetwork providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(2) it is not reasonable to obtain the services through a network provider.

(j) A Medicare Select policy or certificate must provide payment for full coverage under the policy for covered services that are not available through network providers.

(k) A Medicare Select issuer must make full and fair disclosure, in writing, of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure must include at least the following:

(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with other Medicare supplement policies or certificates offered by the issuer and with other Medicare Select policies or certificates;

(2) a description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers;

(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized (except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L);

(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(5) a description of limitations on referrals to restricted network providers and to other providers;

(6) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

(8) For hospital network providers, the statement in 12-point bold-face type: "Only certain hospitals are network providers under this policy. Check with your physician to determine if he or she has admitting privileges at the network hospital. If he or she does not, you may be required to use another physician at time of hospitalization or you will be required to pay for all expenses." This statement must also be included in the "invitation to contract" advertisement, as that term is defined in §21.113(b) of this title (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising).

(l) Before the sale of a Medicare Select policy or certificate, a Medicare Select issuer must obtain from the applicant a signed and dated form stating that the applicant has received the information provided under subsection (k) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(m) A Medicare Select issuer must have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures must be aimed at mutual agreement for settlement and may include arbitration procedures. If a binding arbitration procedure is included, the insured must have made an informed choice to accept binding arbitration after having been advised of the right to reject this method of dispute or claim resolution.

(1) The grievance procedure must be described in the policy and certificates and in the outline of coverage. The in-hospital grievance procedure must be outlined separately from the grievance procedures for other treatments or services, or both. All grievances should be addressed immediately and resolved as soon as possible. Grievances relating to ongoing hospital treatment should be addressed immediately on receipt of any written or oral grievance, and be resolved as quickly as possible in a manner that does not interfere with, obstruct, or interrupt continued proper medical treatment and care of the patient. The timetable for their resolution must comply with all applicable provisions of the Insurance Code.

(2) At the time the policy or certificate is issued, the issuer must provide detailed information to the policyholder describing how

a grievance may be registered with the issuer, both during the period of care and after care.

(3) Grievances must be considered in a timely manner and must be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action must be taken promptly.

(5) All concerned parties must be notified about the results of a grievance.

(6) The issuer must report no later than each March 31st to the Commissioner regarding its grievance procedure. The report must be in a format prescribed by the Commissioner, must contain the number of grievances filed in the past year, and must include a summary of the subject, nature, and resolution of the grievances.

(n) At the time of initial purchase, a Medicare Select issuer must make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(o) At the request of an individual covered under a Medicare Select policy or certificate, a Medicare Select issuer must make available to the individual covered the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that has comparable or lesser benefits and that does not contain a restricted network provision. The issuer must make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(p) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services, or coverage for Part B excess charges.

(q) Medicare Select policies and certificates must provide for continuation of coverage in the event the Secretary determines that Medicare Select policies and certificates issued under this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer must make available to each individual covered under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer that has comparable or lesser benefits and that does not contain a restricted network provision. The issuer must make these policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purpose of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services, or coverage for Part B excess charges.

(r) A Medicare Select issuer must comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802338
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: June 13, 2018
Proposal publication date: December 22, 2017
For further information, please call: (512) 676-6584

28 TAC §3.3318

STATUTORY AUTHORITY. The Commissioner adopts the repeal of 28 TAC §3.3318 under Insurance Code §§1652.005, 1652.051, 1652.052, 1652.102, 1652.151, 1652.152, and 36.001 and 42 U.S.C. §1395ss.

Insurance Code §1652.005 provides that, in addition to other rules required or authorized by this chapter, the Commissioner must adopt reasonable rules necessary and proper to carry out Chapter 1652, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certification as a state with an approved program.

Insurance Code §1652.051 provides, in part, that the Commissioner must adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans. The standards are in addition to and must be in accordance with applicable laws of this state; applicable federal law, rules, regulations, and standards; and any model rules and regulations required by federal law, including 42 U.S.C. §1395ss. The standards may include provisions relating to terms of renewability; benefit limitations, exceptions, and reductions; and exclusions required by state or federal law.

Insurance Code §1652.052(a) provides that the Commissioner must adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans. Insurance Code §1652.052(b) states that the standards for benefits and claim payments must include the requirements for certification of Medicare supplement benefit plans under 42 U.S.C. §1395ss.

Insurance Code §1652.102(c) provides that the Commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios.

Insurance Code §1652.151 provides, in part, that the rules adopted under §1652.152 must include provisions and requirements that are at least equal to those required by federal law, including the rules, regulations, and standards adopted under 42 U.S.C. §1395ss.

Insurance Code §1652.152(a) provides that for full and fair disclosure in the sale of Medicare supplement benefit plans, a Medicare supplement benefit plan or certificate may not be delivered or issued for delivery in Texas unless an outline of coverage that complies with §1652.152 is delivered to the applicant when the applicant applies for the coverage, and Insurance Code §1652.152(b) provides that the Commissioner by rule must

prescribe the format and content of the outline of coverage required by subsection (a). The rules must address the style, arrangement, and overall appearance of the outline of coverage, including the size, color, and prominence of type and the arrangement of text and captions.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of Texas.

Title 42 U.S.C. §1395ss(a)(2)(A) provides, in part, that no Medicare supplemental policy may be issued in a state on or after the date specified, unless the State's regulatory program provides for the application and enforcement of the NAIC Model Standards and requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2018.

TRD-201802337
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: June 13, 2018
Proposal publication date: December 22, 2017
For further information, please call: (512) 676-6584

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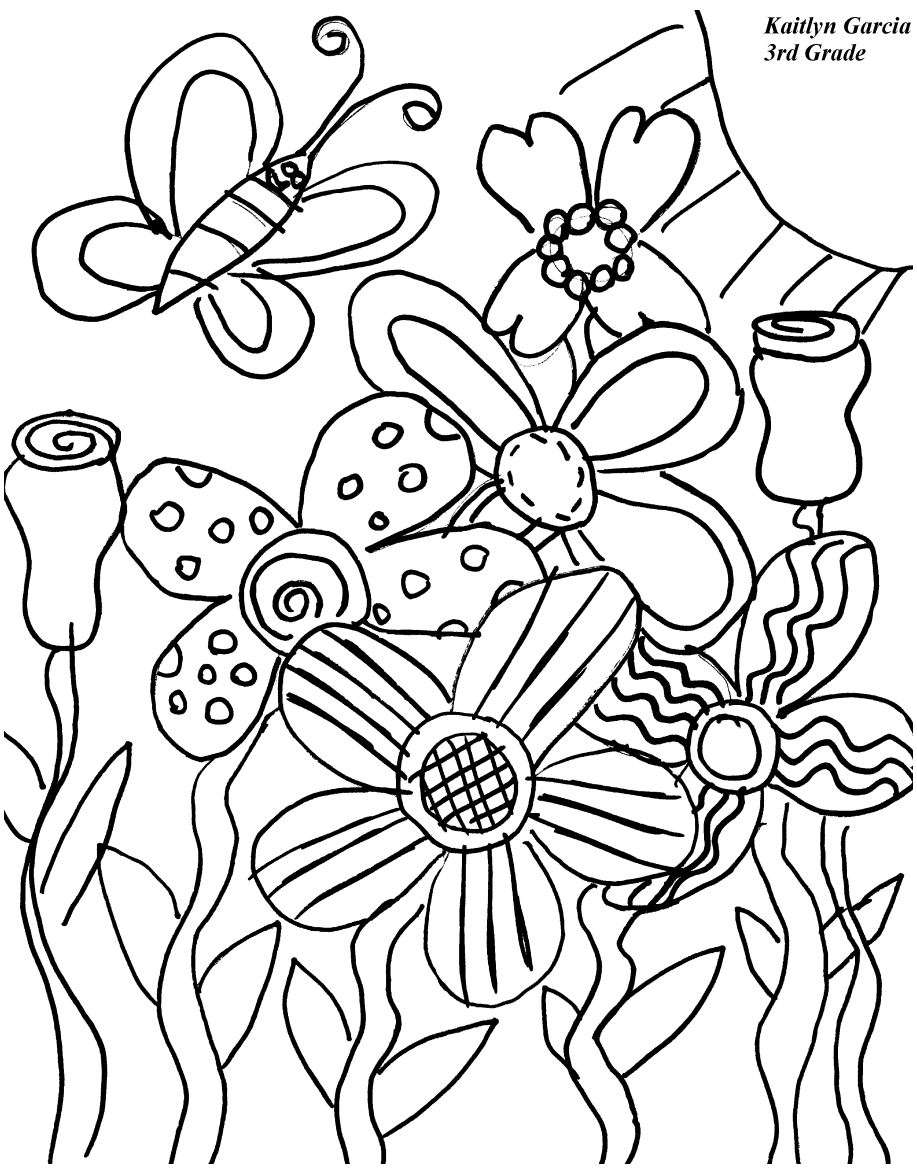

Kaitlyn Garcia
3rd Grade

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("the Department") files this notice of Intention to Review 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.11, concerning Definition of Service-Enriched Housing. The review is being conducted in accordance with Tex. Gov't Code, §2001.039, which requires state agencies to review and consider for repeal, readoption, or readoption with amendments their administrative rules every four years. The review shall assess whether the reasons for initially adopting the rule continues to exist.

The Department will accept public comments for thirty (30) days following the publication of this notice concerning whether the reasons for initially adopting the rule continue to exist.

All comments or questions in response to this notice of rule review may be submitted in writing from June 4, 2018, through July 3, 2018. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0070, or email info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, July 3, 2018. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* in accordance with the Administrative Procedure Act, Tex. Gov't Code, Chapter 2001.

TRD-201802311

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 24, 2018

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Adopted Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part 3

The Texas Alcoholic Beverage Commission readopts without change 16 Texas Administrative Code §50.23, Change of Ownership or Location.

Notice of the proposed review of the rule was published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2293) and a public hearing was held on April 26, 2018. No comments were received.

The rule review was conducted pursuant to Government Code §2001.039. The agency finds that the reasons for adopting the rule continue to exist. The rule reflects current legal and policy considerations, reflects current procedures of the Commission, and is not obsolete.

TRD-201802357

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: May 29, 2018

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TEXAS

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.

Chapter 10—Hurricane Harvey

When Hurricane Harvey made landfall near Rockport on August 25, 2017, its direct impact was felt by many Texas school districts and charter schools, which were forced to suspend classes, some for an extended period.

Forty-seven Texas counties were identified by a Presidential Disaster Declaration as eligible for categories of public assistance through the Federal Emergency Management Agency: Aransas, Austin, Bastrop, Bee, Brazoria, Burleson, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Lavaca, Lee, Liberty, Madison, Matagorda, Milam, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, Washington, and Wharton.

On September 12, 2017, the commissioner of education asked superintendents to submit data through the Texas Student Data System (TSDS) Summer 1 collection by close of business every Friday when enrolling students with a Crisis Code 05. On October 5, 2017, the commissioner informed superintendents that the Texas Education Agency (TEA) made modifications to TSDS Crisis Code reporting for students affected by the hurricane for the 2017–18 data submissions. The new crisis code information serves various purposes by identifying the number of students impacted by Hurricane Harvey. The following chart shows the Hurricane Harvey TSDS Crisis Code values used in 2017–18 data submissions.

TSDS Crisis Code Values

Crisis Code	Meaning
00	Student Was Not Affected By A Health Or Weather Related Crisis
5A	This specific code indicates a student was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey, and the student enrolled in a different LEA during the 2017–2018 school year.
5B	This specific code indicates a student was enrolled or was eligible to enroll in an LEA impacted by Hurricane Harvey, and the student enrolled in another campus in the same LEA during the 2017–2018 school year.
5C	This specific code indicates a student is identified as homeless because of Hurricane Harvey but has remained enrolled in their home campus during the 2017–2018 school year.

TSDS Weekly Crisis Code Report Final Submission

On February 8, 2018, the commissioner announced final crisis code data needed to be submitted by March 9, 2018. Crisis code data submitted through March 9, 2018, in conjunction with other information submitted to TEA, is used to inform decisions related to the impact of Hurricane Harvey for the purpose of accountability adjustments.

Hurricane Harvey Provision

School districts, open-enrollment charter schools, and campuses directly affected by Hurricane Harvey will be eligible for special evaluation if they meet the following criteria.

Campuses

Campuses will be evaluated under the Hurricane Harvey Provision if they meet at least one of the following criteria:

a) The campus identified 10 percent or more of enrolled students in either the October snapshot data or in weekly crisis code reports finalized on March 9, 2018, with crisis codes 5A, 5B, or 5C. Campus enrollment is based on October snapshot data.

b) The campus reported 10 percent or more of its teachers experienced homelessness due to Hurricane Harvey, as reported in the Homeless Survey announced February 14, 2018.

c) The campus was reported to TEA as closed for ten or more instructional days due to Hurricane Harvey.

d) The campus was reported to TEA as displaced due to Hurricane Harvey either because the student population was relocated to another geographic location at least through winter break or the student population was required to share its own campus facility with the students of another campus closed as a direct result of Hurricane Harvey at least through winter break.

Under the Hurricane Harvey Provision, 2018 accountability data and ratings will be generated for eligible campuses using available data. If a campus meets at least one of the Hurricane Harvey criteria described above and receives an *Improvement Required* rating, the campus will be labeled *Not Rated*.

School Districts and Open-Enrollment Charter Schools

School districts and open-enrollment charter schools will be labeled *Not Rated* under the Hurricane Harvey Provision if all campuses within the school district or open-enrollment charter school receive a *Not Rated* label as a result of the Hurricane Harvey Provision.

Additionally, if 10 percent or more of the school district or open-enrollment charter school's students were reported on the October snapshot as enrolled in a campus labeled *Not Rated* under the Hurricane Harvey Provision, the school district or open-enrollment charter school will be labeled *Not Rated*.

Under the Hurricane Harvey Provision, 2018 accountability data and ratings will be generated for eligible districts using available data. If a district or open-enrollment charter school meets at least one of the district and open-enrollment charter school Hurricane Harvey criteria described above and receives a *B, C, D,* or *F* rating, the district or open-enrollment charter school will be labeled *Not Rated*.

For purposes of counting consecutive years of ratings, 2017 and 2019 will be considered consecutive for school districts, open-enrollment charter schools, and campuses receiving a *Not Rated* label in 2018 due to hurricane-related issues.

Appeals

Any hurricane-affected school district, open-enrollment charter school, or campus not identified as eligible for this provision may appeal under the accountability appeals process. The commissioner-adopted criteria detailed in this chapter are final. Therefore, requests for exceptions to the rules for a school district, open-enrollment charter school, or campus are viewed unfavorably and will most likely be denied. See "Chapter 8—Appealing the Ratings."

Hurricane Harvey and the Public Education Grant (PEG) Program Campus List

Campuses receiving a *Not Rated* label in 2018 due to Hurricane Harvey provisions will be excluded from the list of 2019–20 PEG campuses released on August 15, 2018. For more information about the PEG program, please see Chapter 9 and the PEG webpage on the TEA website at https://tea.texas.gov/PEG.aspx.

Figure: 28 TAC §3.3307(f)

TEXAS DEPARTMENT OF INSURANCE
MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR THE CALENDAR YEAR _____

TYPE[1]

_____SMSBP[2]_____

For the State of Texas

_____

Company Name

_____

NAIC Group Code _____NAIC Company Code _____

Address _____

Person Completing this Exhibit _____

Title _____Telephone _____

☐ This company did not have any Medicare supplement business written or policies or certificates in force in Texas during the reporting year.

Line		(I) Earned Premium[3]	(II) Incurred Claims[4]
1.	Current Year's Experience		
	a. Total (all policy years)	_____	_____
	b. Current year's issues[5]	_____	_____
	c. Net (for reporting purposes) (line 1a - line 1b)	_____	_____
2.	Past Year's Experience (all policy years)	_____	_____
3.	Total Experience (line 1c + line 2)	_____	_____
4.	Refunds Last Year (excluding interest)	_____	
5.	Refunds From all Previous Reporting Years (excluding interest)	_____	
6.	Refunds Since Inception (excluding interest) (line 4 + line 5)	_____	
7.	Benchmark Ratio Since Inception (Ratio 1 automatically calculated from Benchmark form)	_____	

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select only. (Ensure you have chosen the correct "Type." Changing the "Type" after data has been entered in the Benchmark page will result in the deletion of all data entered in the Benchmark page.)

[2] SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

[3] Includes Modal Loadings and Fees Charged.

[4] Excludes Active Life Reserves.

[5] This will be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios."

TEXAS DEPARTMENT OF INSURANCE
MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR THE CALENDAR YEAR _____
(Continued)

TYPE
[1] _____ SMSBP[2] _____
Company Name _____

8. Experienced Ratio Since Inception (Ratio 2) _____
   (line 3, col. II) / (line 3, col. I - line 6)

9. Life Years Exposed Since Inception _____
   If (line 8 < line 7) AND (line 9 > 499), proceed; otherwise, stop.

10. Tolerance Permitted (obtained from credibility table) _____

Medicare Supplement Credibility Table	
Life Years Exposed Since Inception	Tolerance
10,000+	0.0%
5,000 – 9,999	5.0%
2,500 – 4,999	7.5%
1,000 – 2,499	10.0%
500 – 999	15.0%
If less than 500, no credibility	

11. Adjustment to Incurred Claims for Credibility (Ratio 3) _____
    (line 8 + line 10)

    If (line 11 > line 7), a refund/credit is not required; otherwise, proceed.

12. Adjusted Incurred Claims _____
    (line 3, col. I - line 6) x (line 11)

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select only.
[2] SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

TEXAS DEPARTMENT OF INSURANCE
MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR THE CALENDAR YEAR _____
(Continued)

TYPE[1] _____ SMSBP[2] _____

Company Name _____

13. Refund _____
[line 3, col. I - line 6 - (line 12 / line 7)]

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year (the de minimis amount), then there is no refund. Otherwise, the amount on line 13 will be refunded or credited, and a description of the refund or credit against premiums to be used must be provided in the Distribution Methodology field.

De minimis Amount _____
(.005 x annualized premium in force on 12/31)

Distribution Methodology

☐ By checking this box, I attest that all information contained in this form is a full and true statement in accordance with the instructions provided to the best of my information, knowledge, and belief.

_____
Name

_____
Title

_____
Date

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select only.
[2] SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.

TEXAS DEPARTMENT OF INSURANCE
REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR THE CALENDAR YEAR _____

TYPE [1] _____ SMSBP[2] _____
Company Name _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
		2.770		0.442		0.000		0.000		0.40
		4.175		0.493		0.000		0.000		0.55
		4.175		0.493		1.194		0.659		0.65
		4.175		0.493		2.245		0.669		0.67
		4.175		0.493		3.170		0.678		0.69
		4.175		0.493		3.998		0.686		0.71
		4.175		0.493		4.754		0.695		0.73
		4.175		0.493		5.445		0.702		0.75
		4.175		0.493		6.075		0.708		0.76
		4.175		0.493		6.650		0.713		0.76
		4.175		0.493		7.176		0.717		0.76
		4.175		0.493		7.655		0.720		0.77
		4.175		0.493		8.093		0.723		0.77
		4.175		0.493		8.493		0.725		0.77
		4.175		0.493		8.684		0.725		0.77
Total:		(k):		(l):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n) / (k+m): _____ (Ratio 1)

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select only.
[2] SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.
[3] Data entered must be for the calendar year displayed.
[4] For the calendar year on the appropriate line in column (a), the premium earned during that year is for policies issued in that year.
[5] These loss ratios are not explicitly used in computing the benchmark ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

TEXAS DEPARTMENT OF INSURANCE
REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES
FOR THE CALENDAR YEAR _____

TYPE [1] _____ SMSBP[2] _____
Company Name _____

(a)[3]	(b)[4]	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)[5]
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss Ratio	(d)x(e)	Factor	(b)x(g)	Cumulative Loss Ratio	(h)x(i)	Policy Year Loss Ratio
		2.770		0.507		0.000		0.000		0.46
		4.175		0.567		0.000		0.000		0.63
		4.175		0.567		1.194		0.759		0.75
		4.175		0.567		2.245		0.771		0.77
		4.175		0.567		3.170		0.782		0.80
		4.175		0.567		3.998		0.792		0.82
		4.175		0.567		4.754		0.802		0.84
		4.175		0.567		5.445		0.811		0.87
		4.175		0.567		6.075		0.818		0.88
		4.175		0.567		6.650		0.824		0.88
		4.175		0.567		7.176		0.828		0.88
		4.175		0.567		7.655		0.831		0.88
		4.175		0.567		8.093		0.834		0.89
		4.175		0.567		8.493		0.837		0.89
		4.175		0.567		8.684		0.838		0.89
Total:		(k):		(I):		(m):		(n):		

Benchmark Ratio Since Inception: (l+n) / (k+m): _____ (Ratio 1)

[1] Individual, Group, Individual Medicare Select, or Group Medicare Select only.
[2] SMSBP means Standardized Medicare Supplement Benefit Plan. Use "PS" for pre-standardized plans.
[3] Data entered must be for the calendar year displayed.
[4] For the calendar year on the appropriate line in column (a), the premium earned during that year is for policies issued in that year.
[5] These loss ratios are not explicitly used in computing the benchmark ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

Insurance Company Name ____

Form Numbers for Medicare Supplement Refund Calculation
for Plan ____________________________________

Please enter only one form number per line.	Please enter only one form number per line.

Print Form   Submit by Email

Figure: 30 TAC §336.1310

Disposal Rate for the Compact Waste Disposal Facility

1. **Base Disposal Charge:**

1A. Waste Volume Charge	Charge per cubic foot ($/ft3)
Class A LLW	$100
Class B and C LLW	$1,000
Sources – Class A	$500

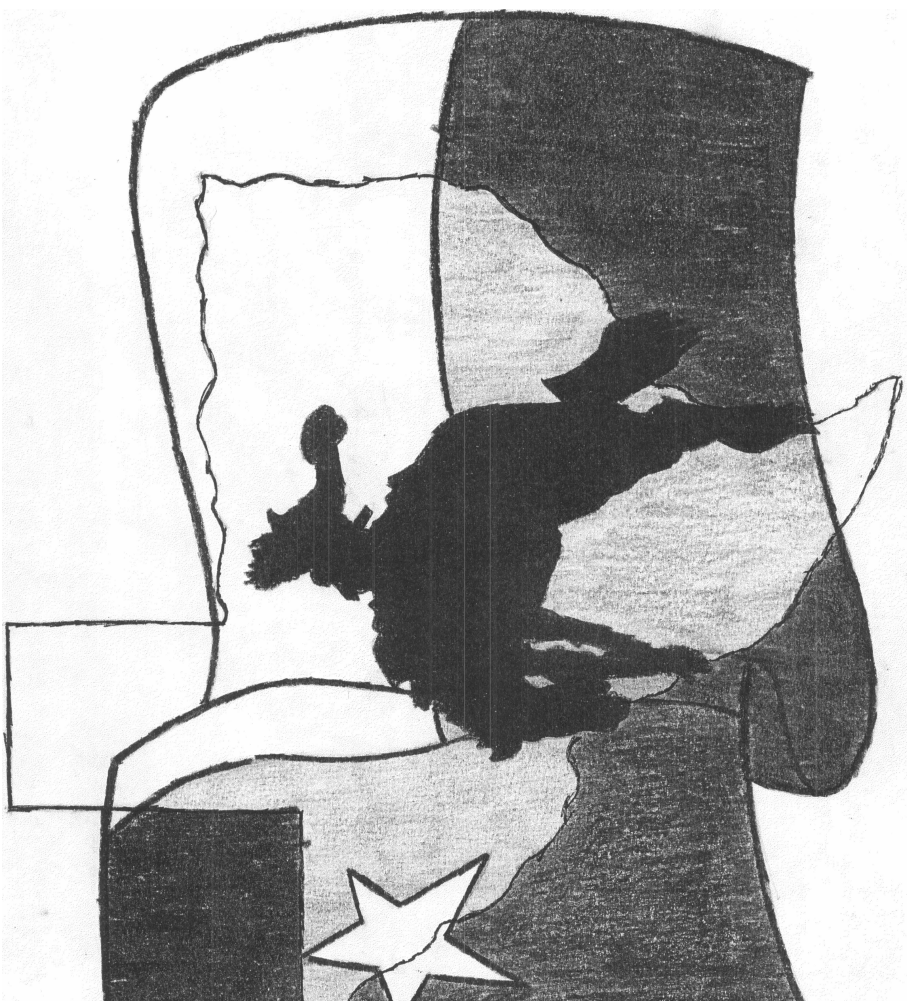
1B. Radioactivity Charge	
Curie Inventory Charge ($/millicurie (mCi))	$0.40
Maximum Curie Charge (per shipment) (excluding C-14)	$220,000/shipment

2. **Surcharges to the Base Disposal Charge:**

2A. Weight Surcharge - Weight (lbs.) of Container	Surcharge ($/container)
Greater than 50,000 lbs	$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container	Surcharge per cubic foot ($/ft3)
Greater than 500 R/hour	$400

2C. Irradiated Hardware Surcharge	
Surcharge for special handling per shipment	$75,000/shipment



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 Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the Polk-Wisdom Branch Library at 27151 Library Ln, Dallas, Texas 75232 on Friday, June 22, 2018, at 1:00 p.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, rehabilitation and equipping of the following multifamily housing project (the "Project"), as well as to fund any working capital for the Project, any reserve funds and costs of issuance for the Bonds:

Beckley Townhomes (fka Rosemont at Timber Creek), 801 Beckleymease Avenue, Dallas, Texas 75232.

The maximum aggregate face amount of the Bonds to be issued with respect to the Project is $10,000,000. The owner of the Project is Dallas Leased Housing Associates V, LLLP, a Minnesota Limited Liability Partnership.

All interested persons are invited to attend the public hearing to express orally or in writing their views on the Project and the issuance of the Bonds. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Lacy Brown, ADA Responsible Employee, at (512) 220-1174 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at ddanenfelzer@tsahc.org.

David Danenfelzer

Senior Director of Development Finance Programs

Texas State Affordable Housing Corporation

2200 East Martin Luther King Jr. Boulevard

Austin, Texas 78702

TRD-201802332
David Long
President
Texas State Affordable Housing Corporation
Filed: May 24, 2018

♦ ♦ ♦

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the Office of the Issuer at 2200 East Martin Luther King Jr. Blvd, Austin, Texas 78702 on Friday, June 29, 2018, at 12:00 p.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, rehabilitation and equipping of the following multifamily housing project (the "Project"), as well as to fund any working capital for the Project, any reserve funds and costs of issuance for the Bonds:

Beckley Townhomes (fka Rosemont at Timber Creek), 801 Beckleymease Avenue, Dallas, Texas 75232.

The maximum aggregate face amount of the Bonds to be issued with respect to the Project is $10,000,000. The owner of the Project is Dallas Leased Housing Associates V, LLLP, a Minnesota Limited Liability Partnership.

All interested persons are invited to attend the public hearing to express orally or in writing their views on the Project and the issuance of the Bonds. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

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Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at ddanenfelzer@tsahc.org.

David Danenfelzer

Senior Director of Development Finance Programs

Texas State Affordable Housing Corporation

2200 East Martin Luther King Jr. Boulevard

Austin, Texas 78702

TRD-201802333
David Long
President
Texas State Affordable Housing Corporation
Filed: May 24, 2018

♦ ♦ ♦

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the Office of the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702 on Friday, June 29, 2018, at 12:15 p.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the acquisition, rehabilitation and equipping of the following multifamily housing project (the "Project"), as well as to fund any working capital for the Project, any reserve funds and costs of issuance for the Bonds:

Walnut Creek Apartments, Located at 6409 Springdale Road, Austin, Texas 78723.

The maximum aggregate face amount of the Bonds to be issued with respect to the Project is $16,000,000. The owner of the Project is LIH Walnut Creek Austin LP, a Texas forprofit corporation.

All interested persons are invited to attend the public hearing to express orally or in writing their views on the Project and the issuance of the Bonds. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Lacy Brown, ADA Responsible Employee, at (512) 220-1174 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at ddanenfelzer@tsahc.org.

David Danenfelzer

Senior Director of Development Finance Programs

Texas State Affordable Housing Corporation

2200 East Martin Luther King Jr. Boulevard

Austin, Texas 78702

TRD-201802334
David Long
President
Texas State Affordable Housing Corporation
Filed: May 24, 2018

♦ ♦ ♦

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, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/04/18 - 06/10/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/04/18 - 06/10/18 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 05/01/18 - 05/31/18 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/18 - 05/31/18 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/18 - 09/30/18 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/18 - 09/30/18 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 07/01/18 - 09/30/18 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 07/01/18 - 09/30/18 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 07/01/18 - 09/30/18 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/18 - 09/30/18 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 07/01/18 - 09/30/18 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/18 - 06/30/18 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/18 - 06/30/18 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201802355
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 29, 2018

♦ ♦ ♦

Court of Criminal Appeals

Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for prosecutors, prosecutor office personnel, criminal defense attorneys and criminal defense attorney office personnel who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, or other persons as provided by statute.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for law enforcement officers, law students, criminal defense attorneys, prosecuting attorneys, judges, or other persons as provided by statute.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act. The grant period is September 1, 2018, through August 31, 2019. The deadline for applications is July 2, 2018. Applicants may request an application packet by contacting the Judicial Education Section of the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicialeducation@txcourts.gov.

TRD-201802335

Megan Molleur
Grant Administrator
Court of Criminal Appeals
Filed: May 24, 2018

♦ ♦ ♦

State Board of Dental Examiners

Anesthesia Stakeholder Meeting Notice

The Anesthesia Committee, a standing committee of the Texas State Board of Dental Examiners (board), is tasked with the ongoing review of the sedation/anesthesia rules and permitting process along with considering new rules pursuant to SB 313 of the 85th Regular Legislative Session. The committee is scheduled to meet on **Thursday, May 31, 2018,** to discuss and take possible action on the following rules:

- Proposed 22 Tex. Admin. Code §110.16 Sedation of High Risk Patients

- Proposed 22 Tex. Admin. Code §110.17 Sedation of Pediatric Patients

- New 22 Tex. Admin. Code §110.18 Inspection of Sedation/Anesthesia Providers

Board staff will convene a Stakeholder Meeting to provide interested persons an opportunity to provide input on the content of any of the above rules. The Stakeholder Meeting will be held on:

Tuesday, May 29, 2018, at 1:00 p.m.

at the

William P. Hobby Jr. Building

Tower 3, Room 102

333 Guadalupe Street

Austin, Texas 78701

Persons who are planning to attend and need special accommodations should contact Nelda Chapa at nchapa@tsbde.texas.gov or (512) 463-0721. Arrangements should be made as far in advance as possible.

TRD-201802280
Alex Phipps
General Counsel
State Board of Dental Examiners
Filed: May 23, 2018

♦ ♦ ♦

Texas Education Agency

Texas Classroom Teachers Association Public Comment on Proposed New 19 TAC Chapter 152, Commissioner's Rules Concerning Examination Requirements, §152.1001, Exceptions to Examination Requirements for Individuals Certified Outside the State

Filing Date. May 30, 2018

The purpose of this notice is to publish TCTA's public comment on proposed new 19 TAC Chapter 152, Commissioner's Rules Concerning Examination Requirements, §152.1001, Exceptions to Examination Requirements for Individuals Certified Outside the State.

The Texas Education Agency (TEA) filed on April 13, 2018, the adoption of new 19 TAC §152.1001 (TRD #201801601) for publication in the April 27, 2018, issue of the *Texas Register*.

The TCTA submitted public comment on proposed new 19 TAC §152.1001 on March 2, 2018, to the TEA via email; however, due to spam filtration software, the TEA did not receive TCTA's public comment.

Following is a summary of TCTA's public comment on proposed new 19 TAC §152.1001, including TEA's response.

Comment: TCTA commented that a requirement should be added in subsection (c)(1) that eliminates individuals certified in other states from being eligible for an exemption from examination requirements if they have attempted and/or failed certification tests.

Agency Response: The agency disagrees with the recommendation to not allow individuals to qualify for the exemption if they have attempted to meet certification requirements by taking Texas examinations. Individuals who have completed the review of credentials process are instructed by the agency to take and pass required tests to establish their standard certificate. Most individuals certified in other states who gain employment in Texas are encouraged by their employing districts to establish a standard certificate prior to or by the expiration date of their one-year temporary certificate to maintain eligibility for employment in Texas. Thus, individuals attempt tests in their good faith effort to follow the state's instructions to obtain licensure. TEA staff has determined it would be unfair to ban these individuals from the opportunity to apply for and, if eligible, be granted an exemption from examination requirements while allowing the exemption for others who have never attempted the tests.

Comment: TCTA commented that subsection (c)(1)(E) and (F) should be modified to specify that, to qualify for exemption from examination requirements, an individual certified as a classroom teacher in another state should be required to have at least three academic years of verifiable, full-time teaching experience in the last five years and that an individual certified in a role other than classroom teacher in another state should be required to have at least two academic years of verifiable, full-time experience in the last five years.

Agency Response: The agency disagrees. TEA staff has determined that one year of experience for a classroom teacher and two years of experience in a role other than classroom teacher is a reasonable requirement for implementation of the rule.

Comment: TCTA commented that an additional provision should be added to subsection (d) that requires applicants certified as classroom teachers to provide a completed teacher service record that verifies and documents their teaching experience.

Agency Response: The agency agrees and will consider including this requirement in future rulemaking. For now, TEA staff have procedures in place to ensure that completed teacher service records are provided by all applicants for the exemption from examination requirements.

Comment: TCTA commented that in subsection (d)(2), the phrase "at least" should be included before the phrase "two years of experience in the role aligned with the professional class of certificate."

Agency Response: The agency disagrees with the recommendation to modify the rule text as staff has determined this is an unnecessary change and would not substantively change the meaning of the rule.

TRD-201802365
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 30, 2018

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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 (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 10, 2018. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 10, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ABCF LLC dba Hondo Food Mart; DOCKET NUMBER: 2018-0212-PST-E; IDENTIFIER: RN102263720; LOCATION: Hondo, Medina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2018-0118-PWS-E; IDENTIFIER: RN102685641; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.44(d)(6), by failing to provide all dead-end mains with acceptable flush valves and discharge piping; PENALTY: $535; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bharat Patel; DOCKET NUMBER: 2018-0263-EAQ-E; IDENTIFIER: RN110098241; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection plan prior to commencing a regulated activitity over the Edwards Aquifer Contributing Zone; PENALTY: $14,266; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: BZ Enterprises, Incorporated dba I-35 Texaco; DOCKET NUMBER: 2018-0009-PST-E; IDENTIFIER: RN102719630; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $4,924; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: C.C. Crawford Retreading Company, Incorporated; DOCKET NUMBER: 2016-1922-MSW-E; IDENTIFIER: RN103074746; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: used tire repair and retreading and scrap tire processing and transporting facility; RULES VIOLATED: 30 TAC §328.55(5), by failing to submit a new registration application within ten days if a change in operations or management methods occurs such that the existing registration no longer adequately describes current operations or management methods at the facility; 30 TAC §328.61(a), (b)(1), (c), (d) and (f), by failing to design the scrap tire storage site so that the health, welfare, and safety of operators, transporters, and others who may utilize the site are maintained, failing to maintain the limit of three piles of whole used or scrap tires on the ground that cover an area no greater than 8,000 square feet, failing to maintain a minimum separation of 40 feet between outdoor piles consisting of scrap tires or tire pieces, failing to ensure that outdoor piles consisting of scrap tires or tire pieces and entire buildings used to store scrap tires or tire pieces are not within 40 feet of the property line or easements of the scrap tire storage site, and failing to control access to the facility to prevent unauthorized activities; and 30 TAC §37.3011 and §328.71(g), by failing to demonstrate financial assurance for closure, post closure, and corrective action for the facility; PENALTY: $48,750; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Central Texas Mart LLC dba Als Mart; DOCKET NUMBER: 2018-0179-PST-E; IDENTIFIER: RN101493658; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: CIRCLE Y SADDLES, INCORPORATED; DOCKET NUMBER: 2018-0060-MLM-E; IDENTIFIER: RN106037542; LOCATION: Yoakum, Lavaca County; TYPE OF FACILITY: leatherworking; RULES VIOLATED: 30 TAC §§335.62, 335.503(a), and 335.504, and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.513(c) and 40 CFR §262.40(c), by failing to maintain documentation of hazardous waste determinations and waste classifications, including analytical data and/or process knowledge; and 30 TAC §327.5(c) and §330.15(a) and TWC, §26.121(a), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $8,001; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL

OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (512) 339-2929.

(8) COMPANY: City of Goodlow; DOCKET NUMBER: 2017-0453-PWS-E; IDENTIFIER: RN101439982; LOCATION: Goodlow, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the January 1, 2012 - December 31, 2014, monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ for calendar years 2014 and 2015; 30 TAC §290.272 and §290.274(a) and (c), by failing to meet the adequacy requirements of the CCR distributed to the customers of the facility for calendar year 2013; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of Stage 2 Disinfection Byproducts sampling for the January 1, 2015 - December 31, 2015, monitoring period, and failure to submit a Disinfectant Level Quarterly Operating Report for the third quarter of 2015; PENALTY: $610; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Lockney; DOCKET NUMBER: 2017-0388-PWS-E; IDENTIFIER: RN101383701; LOCATION: Lockney, Floyd County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(z), by failing to create a Nitrification Action Plan for a system distributing chloraminated water; and 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazard exists; PENALTY: $2,100; Supplemental Environmental Project offset amount of $1,680; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: City of Port Neches; DOCKET NUMBER: 2017-1607-PWS-E; IDENTIFIER: RN102672318; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports submitted to the commission; 30 TAC §290.43(c)(4), by failing to ensure that all clearwells and water storage tanks have a liquid level indicator located at the tank site which can be a float with a moving target, an ultrasonic level indicator, or a pressure gauge calibrated in feet of water; 30 TAC §290.43(e), by failing to ensure that potable water storage tank and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.43(c)(3), by failing to size the overflow to handle the maximum possible fill rate without exceeding the capacity of the overflow; 30 TAC §290.41(e)(2)(C), by failing to designate the restricted zone around the intake structure with signs recounting the restrictions; 30 TAC §290.42(d)(2)(A), by failing to provide vacuum breakers on each hose bibb within the plant facility; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines by the use of labels or various colors of paint; 30 TAC §290.42(d)(2)(C), by failing to provide make-up water supply lines to chemical feeder solution mixing chambers with an air gap or other acceptable backflow prevention device; 30 TAC §290.42(d)(2)(E), by failing to provide filter-to-waste connections with an air gap connection to waste; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(z) and (z)(2), by failing to create a nitrification action plan that contains system-specific action levels of free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels where action must be taken; 30 TAC §290.110(c)(5)(D)(i), by failing to monitor monochloramine and free ammonia (as nitrogen) in the distribution system weekly at the same time as a compliance sample required in 30 TAC §290.110(c)(4); 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals during the months of October 2016 and December 2016; 30 TAC §290.46(s)(2)(B)(iii), by failing to calibrate the four on-line turbidimeters with primary standards at least once every 90 days; 30 TAC §290.46(s)(2)(C)(ii), by failing to check the accuracy of the two continuous disinfectant residual analyzers at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with 30 TAC §290.119; 30 TAC §290.46(d)(2)(B) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum chloramine residual of 0.5 milligrams per liter (measured as total chlorine); and 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low chlorine residual using the prescribed format in 30 TAC §290.47(c); PENALTY: $3,232; Supplemental Environmental Project offset amount of $2,586; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Clean Harbors Deer Park, LLC; DOCKET NUMBER: 2017-1665-AIR-E; IDENTIFIER: RN102184173; LOCATION: La Porte, Harris County; TYPE OF FACILITY: hazardous waste management; RULES VIOLATED: 30 TAC §117.310(f) and §122.143(4), Federal Operating Permit (FOP) Number O1566, Special Terms and Conditions (STC) Number 1.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent the operation of an engine for testing or maintenance purposes during restricted hours; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1566, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Numbers 5064 and N001, Special Conditions Number 1, FOP Number O1566, STC Number 24, and THSC, §382.085(b), by failing to comply with the permitted annual maximum allowable emissions rates for volatile organic compounds nitrogen oxides, sulfur dioxide, particulate matter equal to or less than ten microns in diameter, and carbon monoxide; PENALTY: $83,211; Supplemental Environmental Project offset amount of $33,284; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Crossroads RV Village LLC; DOCKET NUMBER: 2018-0167-PWS-E; IDENTIFIER: RN106495963; LOCATION:

Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 25, 2016 and May 25, 2016, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected, and failing to issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect raw groundwater source samples in April 2016 and May 2016; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue a public notification and submit a copy of the public notification to the ED regarding the failure to conduct routine coliform monitoring during the month of November 2015; PENALTY: $384; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Delta Millworks U.S., LLC; DOCKET NUMBER: 2018-0275-AIR-E; IDENTIFIER: RN109728808; LOCATION: Austin, Travis County; TYPE OF FACILITY: lumber mill; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a source of air emissions; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(14) COMPANY: Hana Travel Plaza Amarillo, Incorporated; DOCKET NUMBER: 2018-0206-PST-E; IDENTIFIER: RN101789519; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $7,074; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: J and V KIT SERVICES, INCORPORATED dba J and V Chevron; DOCKET NUMBER: 2017-1604-PST-E; IDENTIFIER: RN101538387; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: JACKSONVILLE EXPRESS MART, INCORPORATED dba Hot Spot 5; DOCKET NUMBER: 2017-1703-PST-E; IDENTIFIER: RN101838431; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $4,000; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: Johan Gerrit Koke and Sonya Ann Koke dba Blue Jay Dairy; DOCKET NUMBER: 2018-0186-AGR-E; IDENTIFIER: RN102932142; LOCATION: Lingleville, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.36(b) and §321.40(d), and Texas Pollutant Discharge Elimination System Permit Number WQ0003439000, VII, Pollution Prevention Plan Requirements A.8.(f)(2)(i) and X, Special Provisions M.4, by failing to prevent the discharge of agricultural waste into or adjacent to water in the state; PENALTY: $2,963; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Jorawhar Incorporated dba Star Mart; DOCKET NUMBER: 2018-0022-PST-E; IDENTIFIER: RN101730075; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $7,750; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2017-1401-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O1959, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, New Source Review Permit Number 318, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §122.143(4) and §122.144(1)(E), FOP Number O1959, GTC and STC Number 13, and THSC, §382.085(b), by failing to properly record weekly visible emissions observations; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1959, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $76,500; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Perrin-Whitt Consolidated Independent School District; DOCKET NUMBER: 2018-0146-MWD-E; IDENTIFIER: RN102492071; LOCATION: Perrin, Jack County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015059001, Monitoring and Reporting Requirements Number 1, by failing to timely report monitoring results at intervals specified in the permit; 30 TAC §305.125(1) and (9) and TPDES Permit Number WQ0015059001, Monitoring and Reporting Requirements Number 7.c., by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0015059001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,725; ENFORCEMENT COORDINATOR: Chase

Davenport, (512) 239-2615; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(21) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2017-0315-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Federal Operating Permit Number O1440, Special Terms and Conditions Number 20, Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: Rainbow Ranch of Texas, L.L.C.; DOCKET NUMBER: 2018-0253-PWS-E; IDENTIFIER: RN110118643; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $350; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: RANDOLPH WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1664-PWS-E; IDENTIFIER: RN101236891; LOCATION: Randolph, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notice to the customers of the facility within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(c); and 30 TAC §290.44(f)(2), by failing to encase the water line in a separate watertight pipe encasement and provide valves on each side of the crossing when water lines are laid under any flowing or intermittent stream; PENALTY: $313; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Rosebud-Lott Independent School District; DOCKET NUMBER: 2018-0120-PWS-E; IDENTIFIER: RN101194082; LOCATION: Rosebud, Falls County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $405; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: SUBHA Incorporated dba S. Buckner Mart; DOCKET NUMBER: 2017-1700-PST-E; IDENTIFIER: RN101543494; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,125; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201802352
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 29, 2018

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Notice of a Proposed Renewal with Amendment of General Permit WQG200000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend State-Only General Permit WQG200000. This general permit authorizes the disposal of wastewater by evaporation or beneficial irrigation adjacent to water in the state from livestock manure compost operations. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes the disposal of wastewater by evaporation or beneficial irrigation adjacent to water in the state from livestock manure compost operations. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require regulated entities to submit a Notice of Intent to obtain authorization under the general permit.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Advisory Committee regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the proposed general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www.tceq.texas.gov/about/comments.html* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and

will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov*.

Further information may also be obtained by calling Laurie Fleet, TCEQ Water Quality Division, at (512) 239-5445.

Si desea información en español, puede llamar (800) 687-4040.

TRD-201802286
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2018

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Notice of District Petition

TCEQ Internal Control No. D-03052018-005; M/I Homes of Houston, LLC (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 73 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 69.49 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Alvin, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city. By Ordinance No. 18-E, passed and approved on January 18, 2018, the City of Alvin, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, extend, maintain, and operate such other additional improvements, facilities, and equipment as may be consonant with all of the purposes for which the proposed District is created. Within the proposed District, it may also purchase interest in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities, exercise road powers and authority, and establish, finance, provide, operate, and maintain a fire department and/or fire-fighting services. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $8,025,000 ($7,355,000 for water, wastewater, and drainage plus $615,000 for recreation plus $55,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the 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-201802371
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 30, 3018

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code Chapter 336, Radioactive Substance Rules, §§336.356, 336.1301, 336.1305, 336.1307, 336.1309 -

336.1311, and 336.1317 and the proposed repeal of §336.1313, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The rulemaking is proposed to add a requirement for licensees to minimize the introduction of residual radioactivity into the site, including the subsurface; adjust the surcharge fees for compact waste disposal; and remove the annual requirement for rate adjustment for disposal of Low-Level Radioactive Waste to allow flexibility to incorporate rate adjustments on an as-needed basis.

The commission will hold a public hearing on this proposal in Austin on June 28, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2016-034-336-WS. The comment period closes on July 10, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Division, at (512) 239-6465.

TRD-201802285
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2018

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Notice of Public Meeting for an Air Quality Permit Proposed Air Quality Permit Numbers 6825A, PSDTX49M1, and GHGPSDTX167

APPLICATION. The Premcor Refining Group Inc., P.O. Box 909, Port Arthur, Texas 77641-0909, has applied to the Texas Commission on Environmental Quality (TCEQ) for modification of State Air Quality Permit 6825A, modification to Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX49M1, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX167 for emissions of GHGs, which would authorize modification of the Valero Port Arthur Refinery located at 1801 S Gulfway Dr, Port Arthur, Jefferson County, Texas 77640. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The existing facility will emit the following air contaminants in a significant amount: hydrogen sulfide, nitrogen oxides, organic compounds, hazardous air pollutants, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and greenhouse gases.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held: Thursday, June 7, 2018, at 7:00 p.m.

Carl A. Parker Multipurpose Center, Banquet Room 212

At Lamar State College-Port Arthur 1800 Lakeshore Drive

Port Arthur, Texas 77640

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *http://www.tceq.texas.gov/about/comments.html.* If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at *www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Beaumont regional office, and at the Groves Public Library, 5600 West Washington Avenue, Groves, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Fwy, Beaumont, Texas. Further information may also be obtained from The Premcor Refining Group Inc. at the address stated above or by calling Ms. Paula Larocca, Manager Environmental Engineering at (409) 985-1200.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: May 25, 2018

TRD-201802373

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 30, 2018

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Notice of Request for Public Comment and Notice of a Public Meeting to Receive Comments on One Draft Total Maximum Daily Load for Indicator Bacteria in Sycamore Creek

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment the draft Total Maximum Daily Load (TMDL) for indicator bacteria in Sycamore Creek in Tarrant County.

The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL for indicator bacteria in one assessment unit (AU) in Segment 0806E: 0806E_01 in Tarrant County and the decision to join the implementation efforts of an approved, adjacent Implementation Plan (I-Plan).

The TCEQ is taking public comment on the draft TMDL for indicator bacteria in Sycamore Creek. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The commission requests comments on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances.

The stakeholders for this project requested to join the implementation efforts of the Greater Trinity River Bacteria I-Plan Project, which has an approved I-Plan in a large area adjacent to the project's watershed. On June 15, 2017, the Coordination Committee for the Greater Trinity River Bacteria I-Plan agreed to accept the addition of the Sycamore Creek watershed to the existing I-Plan.

After the public comment period, the TCEQ may revise the draft TMDL if appropriate. The final TMDL will then be considered by the commission for adoption. The commission will also consider approving the decision to join the existing Greater Trinity River I-Plan. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments received will be made available on the TCEQ website. The TMDL will then be submitted to the EPA Region 6 office for final action by the EPA. Upon approval by the EPA, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting for the draft TMDL will be held on Tuesday, June 26, 2018, at 6:00 p.m. at the Ella Mae Shamblee Library, Shamblee Library Meeting Room, 1062 Evans Avenue, Fort Worth, Texas, 76104.

At this meeting, individuals will have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments on the draft TMDL should be submitted to Dania Grundmann, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-1414. Comments may be submitted electronically to *https://www6.tceq.texas.gov/rules/ecomments/* by midnight on July 9, 2018, and should reference *One Total Maximum Daily Load for Indicator Bacteria in Sycamore Creek.*

For further information regarding the draft TMDL and the decision to join the existing Greater Trinity River I-Plan, please contact Dania Grundmann at (512) 239-3449 or Dania.Grundmann@tceq.texas.gov. Copies of the draft TMDL will be available and can be obtained via the commission's website at: *http://www.tceq.texas.gov/waterquality/tmdl/tmdlnews.html* or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-201802287
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 24, 2018

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Notice of Water Rights Application

Notice issued May 25, 2018

APPLICATION NO. 14-1387A; Craig T. Stephens and Kelly Jo Stephens, 9314 Sunlit Point, San Antonio, Texas 78240, Applicants, seek an amendment to a Certificate of Adjudication to authorize an additional diversion point on the Colorado River, Colorado River Basin, for agricultural purposes to irrigate land in Concho and McCulloch Counties. More information on the application and how to participate in the permitting process is given below. The application and fees were received on September 17, 2012. Additional information and fees were received on July 1 and July 8, 2013, and April 2 and April 5, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 22, 2015. Additional information was received on January 8, 2018. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including, but not limited to, streamflow restrictions and maintaining a measuring device. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by June 12, 2018.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201802372
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 30, 2018

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Texas Facilities Commission

Request for Proposals #303-9-20633

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-9-20633. TFC seeks a five (5) or ten (10) year lease of approximately 12,864 square feet of office space in Austin, Pflugerville, or Round Rock, Texas.

The deadline for questions is June 18, 2018, and the deadline for proposals is June 25, 2018, at 3:00 p.m. The award date is July 19, 2018. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/sp/303-9-20633.

TRD-201802353
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: May 29, 2018

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Texas Health and Human Services Commission

Public Notice - Public Meetings on Implementation of Peer Support Services as a Medicaid Benefit

The Texas Health and Human Services Commission (HHSC) announces its intent to update the public on the implementation of Peer Support Services as a Medicaid Benefit. House Bill 1486, 85th Legislature, Regular Session, 2017, directed the HHSC to add peer support services as a Medicaid benefit. As required by the bill, a stakeholder workgroup provided input on Medicaid rules defining requirements for training, certification, scope of services, and supervision of peer specialists. HHSC will use this meeting to take public comment and review the bill, the stakeholder's work, and the draft rules. The meetings will be held on Monday, June 11, 2018, from 1:00 p.m. to 5:00 p.m. in the Public Hearing Room at the Texas Health and Human Services Commission, Brown Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751 and Tuesday, June 12, 2018, from 1:00 p.m. to 5:00 p.m. in the Public Hearing Room at the Texas Health and Human Services Commission, Moreton Building, 1100 West 49th Street, Austin, Texas 78756.

Copy of Proposed Rules. (Interested parties may obtain a free copy of the proposed rules by contacting Laura Gold, Senior Policy Advisor, by U.S. mail, telephone, fax, or by email at the addresses below.)

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Laura Gold

Brown-Heatly Building

4900 North Lamar

Mail Code H600

Austin, Texas 78751

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Laura Gold

Brown-Heatly Building

4900 North Lamar

Mail Code H600

Austin, Texas 78751

Phone number for package delivery: (512) 730-7440

Fax

Attention: Medicaid/CHIP Services and FAX (512) 487-3403

Email

IDD-BH_Peer_Support_Services-Medicaid_Benefit@hhsc.state.tx.us

TRD-201802360
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 29, 2018

♦ ♦ ♦

Public Notice - Texas State Plan for Medical Assistance Amendments

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2018.

The purpose of these amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Ambulance Services; and

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT), which includes Dental Services.

The proposed amendments are estimated to result in an aggregate cost savings of $1,208,589 for the remainder of federal fiscal year (FFY) 2018, consisting of $687,445 in federal funds and $521,144 in state general revenue. For FFY 2019, the estimated annual aggregate cost savings is $14,735,310, consisting of $8,574,477 in federal funds and $6,160,833 in state general revenue. For FFY 2020, the estimated annual aggregate cost savings is $14,971,073, consisting of $8,951,205 in federal funds and $6,019,868 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: *http://rad.hhs.texas.gov/rate-packets.*

Rate Hearing. A rate hearing was held on May 3, 2018, at 1:30 p.m. in Austin, Texas. Information about the proposed rate changes (including methodology and justification) and the hearing can be found in the April 27, 2018, issue of the *Texas Register* on page 2622 at *http://www.sos.state.tx.us/texreg/index.shtml.*

Copy of Proposed Amendments. Interested parties may obtain a free copy of the proposed amendments and/or additional information about the amendments by contacting Beren Dutra, State Plan Program Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at *Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us.* Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-201802370
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 30, 2018

♦ ♦ ♦

Department of State Health Services

Designation of Practices Serving a Medically Underserved Population

The Texas Department of State Health Services (department) is required under Texas Occupations Code §157.051 to designate practices serving a medically underserved population. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as practices serving a medically underserved population:

-Clinicas Mi Doctor, 6751 Abrams Road, Suite 108, Dallas, Texas 75231;

-Clinicas Mi Doctor, 5230 Aldine Mail Route Road, Houston, Texas 77039;

-MD Family Clinic, 2959 Buckner Boulevard, Suite 700, Dallas, Texas 75227;

-MD Family Clinic, 9991 Marsh Lane, Suite 100, Dallas, Texas 75220;

-MD Kids Pediatrics, 490 IH-10 North, Suite 100, Beaumont, Texas 77702;

-MD Kids Pediatrics, 20403 Farm to Market Road 529, Suite 200, Cypress, Texas 77433;

-MD Kids Pediatrics, 3201 West Saner Avenue, Dallas, Texas 75233;

-MD Kids Pediatrics, 3050 South 1st Street, Suite 209, Garland, Texas 75041;

-MD Kids Pediatrics, 6812 Harrisburg Boulevard, Houston, Texas 77011; and

-MD Kids Pediatrics, 1410 Fry Road, Houston, Texas 77084.

These designations are based on eligibility as practices serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on these designations may be directed to Matthew Turner, PhD, MPH, Program Director, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 776-6541. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201802358
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: May 29, 2018

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Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2019 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs ("the Department") will hold a public hearing to accept public comment on the Draft 2019 Regional Allocation Formula ("RAF") Methodology.

The public hearing will take place as follows:

Thursday, June 7, 2018

2:00 p.m. Austin local time

Stephen F. Austin Building

1700 North Congress Avenue, Room 172

Austin, TX 78701

The RAF may be accessed from TDHCA's Public Comment Center at: https://www.tdhca.state.tx.us/public-comment.htm.

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Texas Governing Code, "the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The Single Family HOME Investment Partnerships Program ("HOME"), Multifamily HOME, Housing Tax Credit ("HTC") and State Housing Trust Fund ("SHTF") program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Texas Government Code requires that 95% of HOME funding be set aside for non-participating jurisdictions ("non-PJs"). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The public comment period for the Draft 2019 RAF methodology will be open from Friday, May 25, 2018, through Friday June 15, 2018, at 6:00 p.m. Austin local time. Anyone may submit comments on the Draft 2019 RAF Methodology in written form or oral testimony at the June 7, 2018, public hearing. Written comments concerning the Draft 2019 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Friday June 15, 2018, at 6:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Ms. Sidney Beaty, ADA responsible employee, at (512) 475-4577 or Relay Texas at (800) 735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201802313
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 24, 2018

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Houston-Galveston Area Council

Development Block Grant Funding Public Meeting and Solicitation for Public Comment

Notice is hereby given that the Houston-Galveston Area Council (H-GAC) is seeking input on the draft method of distribution of $241 million in Community Development Block Grant (CDBG) Disaster Recovery funding to counties and local jurisdictions for only buy-out/acquisition and infrastructure projects associated with Hurricane Harvey. The allocation includes $111 million of recovery funds for a local buyout/acquisition program and $130 million for local infrastructure projects in Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Waller, Walker, and Wharton counties. Written and oral comments will be taken at three public planning meetings and two public hearings scheduled for the following dates, times and locations:

Public Planning Meeting Monday, June 4, 2018 - 2:00 p.m. to 4:00 p.m.- Wharton Civic Center, 1924 N. Fulton Street, Wharton

Public Planning Meeting Tuesday, June 5, 2018 - 6:00 p.m. to 8:00 p.m. - Helen Hall Library Meeting Room, 100 W. Walker Street, League City

Public Planning Meeting Wednesday, June 6, 2018 - 10:00 a.m. to noon - Houston-Galveston Area Council, Conference Room A, Second Floor, 3555 Timmons Lane, Houston

Public Hearing Thursday, June 28, 2018 - 5:00 p.m. to 7:00 p.m. - Courtyard Marriott at Katy Mills, 25402 Katy Mills Parkway, Katy

Public Hearing Friday, June 29, 2018 - 10:00 a.m. to noon - Hilton Homewood Suites, 3000 Interstate 45 North, Conroe

H-GAC will provide for reasonable accommodations for persons attending H-GAC functions. Requests for persons needing special accommodations should be received by H-GAC staff 24-hours prior to the function. The public hearings will be conducted in English, however, Spanish, Vietnamese, and sign language interpreters will be available. For more information, please call Jeff Taebel at (713) 993-4560 for assistance.

The Draft Method of Distribution will be posted on Thursday, June 21, 2018, by 4:00 p.m. at www.h-gac.com/harvey/cdbg-disaster-funds. A hard copy of the draft will be made available for public inspection and comment at the H-GAC reception area at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 throughout the comment period.

H-GAC will accept written comments beginning Thursday, June 21, 2018, through 4:00 p.m. Friday, July 6, 2018. Written comments may be submitted online at www.h-gac.com/harvey/cdbg-disaster-funds; mailed to H-GAC, Attn: Jeff Taebel, Director of Community and Environmental Planning, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227; or hand delivered to H-GAC, 3555 Timmons Lane, Suite 120, Houston, Texas 77027. H-GAC encourages the public to use the online form or hand-deliver comments to ensure delivery of said comments to the State.

TRD-201802276
Jeff Taebel
Director of Community and Environmental Planning
Houston-Galveston Area Council
Filed: May 23, 2018

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North Central Texas Council of Governments

Notice of Contract Award--DART Red and Blue Line Corridors Last Mile Connections Project

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the December 1, 2017, issue of the *Texas Register* (42 TexReg 6842). The selected entity will perform technical and professional work for the DART Red and Blue Line Corridors Last Mile Connections project.

The entity selected for this project is Lee Engineering, LLC, 3030 LBJ Freeway, Suite 1660, Dallas, Texas 75234. The amount of the contract is not to exceed $650,000.

Issued in Arlington, Texas on May 25, 2018.

TRD-201802356
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 29, 2018

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Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 23, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Mountain Sunrise Solar, LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48381.

The Application: On May 23, 2018, Mountain Sunrise Solar, LLC filed an application for approval of the sale of membership interests in Mountain Sunrise Solar, LLC to Wells Fargo Central Pacific Holdings, Inc. The combined generation owned and controlled by Mountain Sunrise and its affiliates following the proposed purchase will not exceed twenty percent of the total electricity offered for sale in the Electric Reliability Council of Texas.

Persons wishing to intervene or comment on the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48381.

TRD-201802341
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 24, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Joint Application of MidAmerican Wind Tax Equity Holdings, LLC and Blue Cloud TE Partnership LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48386.

The Application: On May 24, 2018, MidAmerican Wind Tax Equity Holdings, LLC and Blue Cloud TE Partnership LLC filed a joint application for approval of the sale of Class A interests in Blue Cloud to MidAmerican. Blue Cloud owns 100% of the equity interest in Blue Cloud Wind Energy, LLC which is developing a 148.35 MW wind-powered electric generation facility located in Lamb and Bailey Counties. The combined generation owned and controlled by MidAmerican and its affiliates following the proposed purchase will not exceed 20% of the total electricity offered for sale in the Electric Reliability Council of Texas.

Persons wishing to intervene or comment on the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48386.

TRD-201802359
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 29, 2018

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Notice of Application for Service Area Boundary Change

The Public Utility Commission of Texas (commission) gives notice to the public of an application filed with the commission on May 22, 2018, for a certificate of convenience and necessity (CCN) service area boundary change within Jim Wells County.

Docket Style and Number: Application of AEP Texas, Inc. and Nueces Electric Cooperative, Inc. for a Certificate of Convenience and Necessity Minor Boundary Change in Jim Wells County. Docket Number 48380.

The Application: AEP Texas, Inc. and Nueces Electric Cooperative, Inc. filed an application to amend their CCN boundaries. The proposed service area boundary change will clarify which utility provides electric utility service to future customers.

Persons wishing to comment on the action sought or intervene should contact the commission no later than June 15, 2018 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48380.

TRD-201802281
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 24, 2018

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Regional Water Planning Group - Area B

Public Notice Regional Water Planning Group - Area B Solicitation of Nominations

The Regional Water Planning Group -- Area B (RWPG-B) was established by state law, including Texas Water Code Chapter 16, TWDB rules, and 31 TAC Chapters 355, 357, and 358 on February 19, 1998. Area B includes the following counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the part of Young County that encompasses the City of Olney. The purpose of the RWPG-B is to provide comprehensive regional water planning and to carry out the related responsibilities placed on regional water planning groups by state law. Foremost among those responsibilities is the development of a regional water plan for Area B that identifies both short and long-term water supply needs and recommends water management strategies for addressing them.

Notice is hereby given that the Regional Water Planning Group -- Area B is soliciting nominations for the following interest category seats whose 5-year terms expire effective August 31, 2018:

Environmental -- J. K. (Rooter) Brite, Montague County, **River Authorities** -- Curtis W. Campbell, Wichita County, **Water Utilities** -- N. E. Deweber, Baylor County, **Agricultural** -- Vacant, Wilbarger County, **Counties** -- Judge Kenneth Liggett, Clay County, **Water Districts** -- Mike McGuire, Baylor County, **Agricultural** -- Wilson Scaling, Clay County, **Municipalities** -- Mayor Gayle Simpson, Foard County, **Industries** -- Tamela Armstrong, Wichita County.

Additionally, Region B is soliciting nominations to fill two open seats on the planning group representing the **Electric Generating Utilities** Interest category, and the **Municipalities** Interest category, with terms expiring August 31, 2021.

Nominees must represent the interest category for which a member is sought within the Region B planning area, be willing to participate in the regional water planning process, and abide by the Bylaws of the planning group, to qualify for voting membership on the RWPG-B.

If you would like to submit a nomination for a voting member representative of one of the interest categories listed above, you may do so by sending a letter to the administrative agency -- Red River Authority of Texas, Attention: Stacey Green, Post Office Box 240, Wichita Falls, Texas 76307-0240, or email your nominations to stacey.green@rra.texas.gov. **Nominations must be received or postmarked by Friday, July 13, 2018, to be considered.** Consideration of nominations and voting will take place at the RWPG-B Public Meeting tentatively scheduled for Wednesday, August 22, 2018.

If you have any questions, please contact Red River Authority of Texas at (940) 723-2236 or email at stacey.green@rra.texas.gov.

TRD-201802340
Randy Whiteman
General Manager
Regional Water Planning Group - Area B
Filed: May 24, 2018

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Palacios, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Palacios; TxDOT CSJ No.: 1813PALCS.

The TxDOT Project Manager is Paul Slusser.

Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate Runway 13/31;
2. Mark Runway 13/31;
3. Rehabilitate and mark parallel Taxiway A;
4. Rehabilitate and mark connector Taxiways A1, A2, and A3; and
5. Rehabilitate and mark terminal apron.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 17%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Palacios Municipal Airport may include the following: rehabilitate Runway 17/35; replace medium intensity lighting on Runway 13/31; replace precision approach path indicator on Runway 13/31; construct aircraft hangars; and conduct airfield drainage repairs.

The City of Palacios reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm* by selecting "Palacios Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html*. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than July 11, 2018, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html.*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Bobby Hidrogo. For technical questions, please contact Paul Slusser, TxDOT Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or *avn-egrantshelp@txdot.gov.*

TRD-201802351
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 25, 2018

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Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register.* The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the "rules"). The enabling legislation, as well as the rules, govern the submission and processing of qualifications submittals, and provide for the issuance of a request for qualifications that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of a request for qualifications (RFQ) to design, develop, construct, and potentially maintain improvements in the I-635 corridor from US 75 to I-30 in Dallas County (I-635 LBJ East Project). The project extends a distance of approximately eleven miles and will include full reconstruction and widening from eight to ten general purpose lanes and full reconstruction of the two existing tolled managed lanes for a total of 12 general purpose and tolled managed lanes, construction of continuous frontage roads, and improvements to the I-635/I-30 interchange. The I-635 LBJ East Project to be constructed under the agreement will improve safety and mobility, enhance system continuity, relieve traffic congestion, reduce travel time, and accommodate growth through the region; and has an estimated design-build cost of approximately $1.6 billion.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design-build contract and potentially a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract and potentially a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QS, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and potentially a capital maintenance contract for the project.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on June 8, 2018. Copies of the RFQ will be available at the Texas Department of Transportation, 7600 Chevy Chase Drive, Building 2, Suite 400, Austin, Texas 78752, or at the following website:

https://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/lbj-east/rfq.html.

QSs will be due by 12:00 noon Central Time on July 6, 2018, at the address specified in the RFQ.

TRD-201802362
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 30, 2018

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Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register.* The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating

to design-build contracts (the rules). The enabling legislation, as well as the rules, govern the submission and processing of qualifications statements, and provide for the issuance of a request for qualifications that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of a request for qualifications (RFQ) to design, develop, construct, and potentially maintain the I-2/I-69C Interchange Project in Hidalgo County, Texas. The I-2/I-69C Interchange Project will provide approximately 7.8 miles of non-tolled improvements along I-2 from just west of 2nd Street to just east of FM 2557 (S. Stewart Road) and I-69C from Nolana Loop to I-2 in the cities of McAllen, Pharr, and San Juan, Texas. The proposed improvements include the full reconstruction of the I-2/I-69C interchange to include two-lane direct connectors in all four directions and the I-2 general purpose lanes will be reconstructed and/or widened from six to eight non-tolled general purpose lanes (four in each direction) from 2nd Street to the I-2/I-69C interchange. Operational improvements include the reconfiguration of main lane ramps on I-2 from 2nd Street to FM 2557 (S. Stewart Road) and improvements to the approaches and departures to and from the direct connectors.

The Project has an estimated design-build cost of approximately $320 million.

Through this notice, the department is seeking qualifications statements (QSs) from teams interested in entering into a design-build contract and, potentially, a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract, and potentially, a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and potentially, a capital maintenance contract, for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on June 8, 2018. Copies of the RFQ will be available at the Texas Department of Transportation, 600 W Interstate 2, Pharr, Texas 78577, or at the following website:

https://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/i2i69c-interchange/rfq.html.

QSs will be due by 12:00 p.m. (noon) CST on July 31, 2018 at the address specified in the RFQ.

TRD-201802363
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 30, 2018

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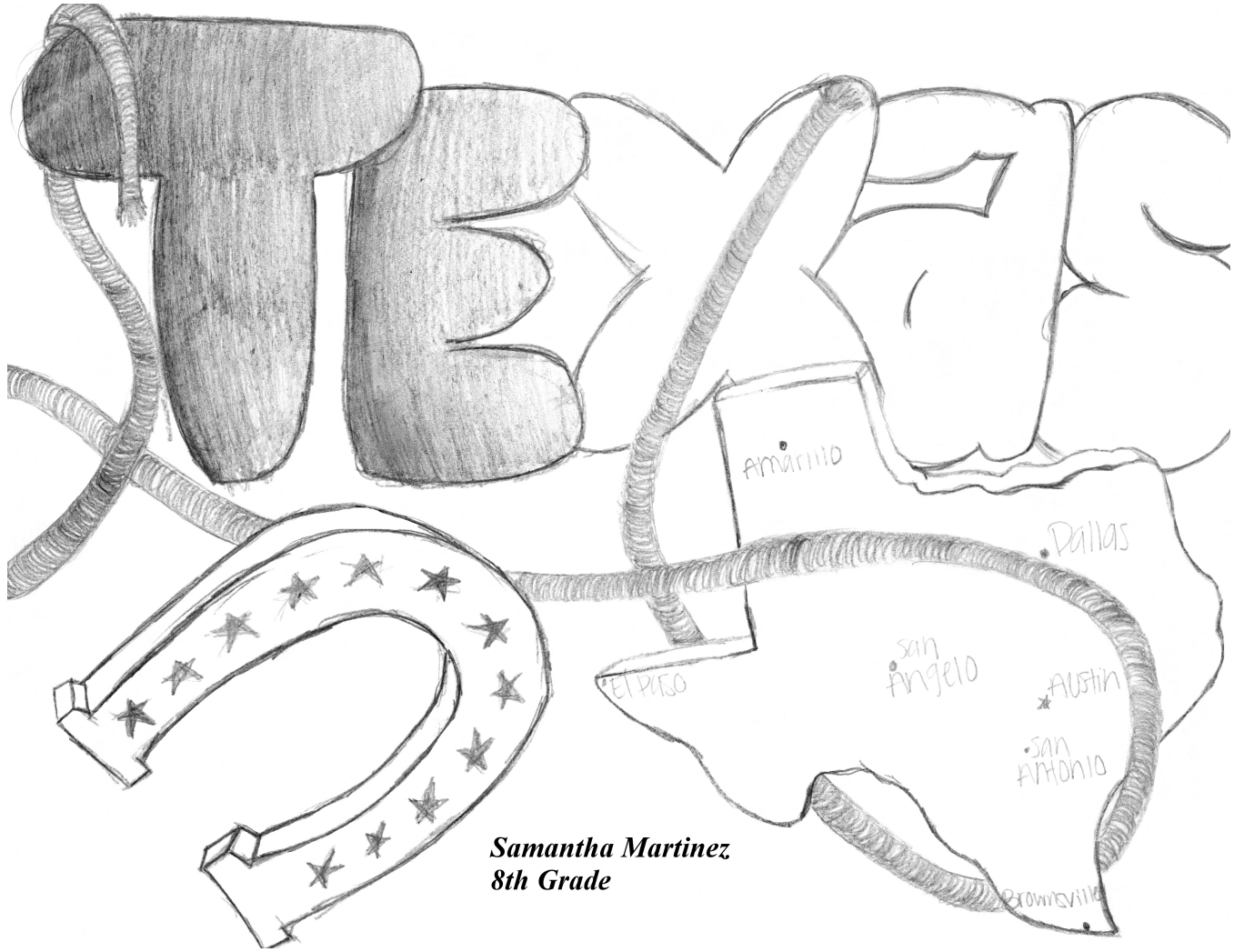
Workforce Solutions Deep East Texas

Request for Proposals #18-370

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (Board) is seeking an employer of record for participants in the Wage Services for Paid Work Experience. Deadline for submitting a Proposal is June 15, 2018 at 5:00 p.m. The Request for Proposal (RFP 18-370) is available at www.detwork.org or a request for a copy of the RFP can be made to: Kim Moulder, Staff Services Specialist, DETLWDB, 415 S. First St., Suite 110 B Lufkin, TX 75901, phone (936) 639-8898, fax (936) 633-7491, or email kmoulder@detwork.org.

TRD-201802331
Kim Moulder
Staff Service Specialist
Workforce Solutions Deep East Texas
Filed: May 24, 2018

♦ ♦ ♦



Samantha Martinez
8th Grade

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

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.

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 43 (2018) is cited as follows: 43 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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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