TEXAS REGISTER

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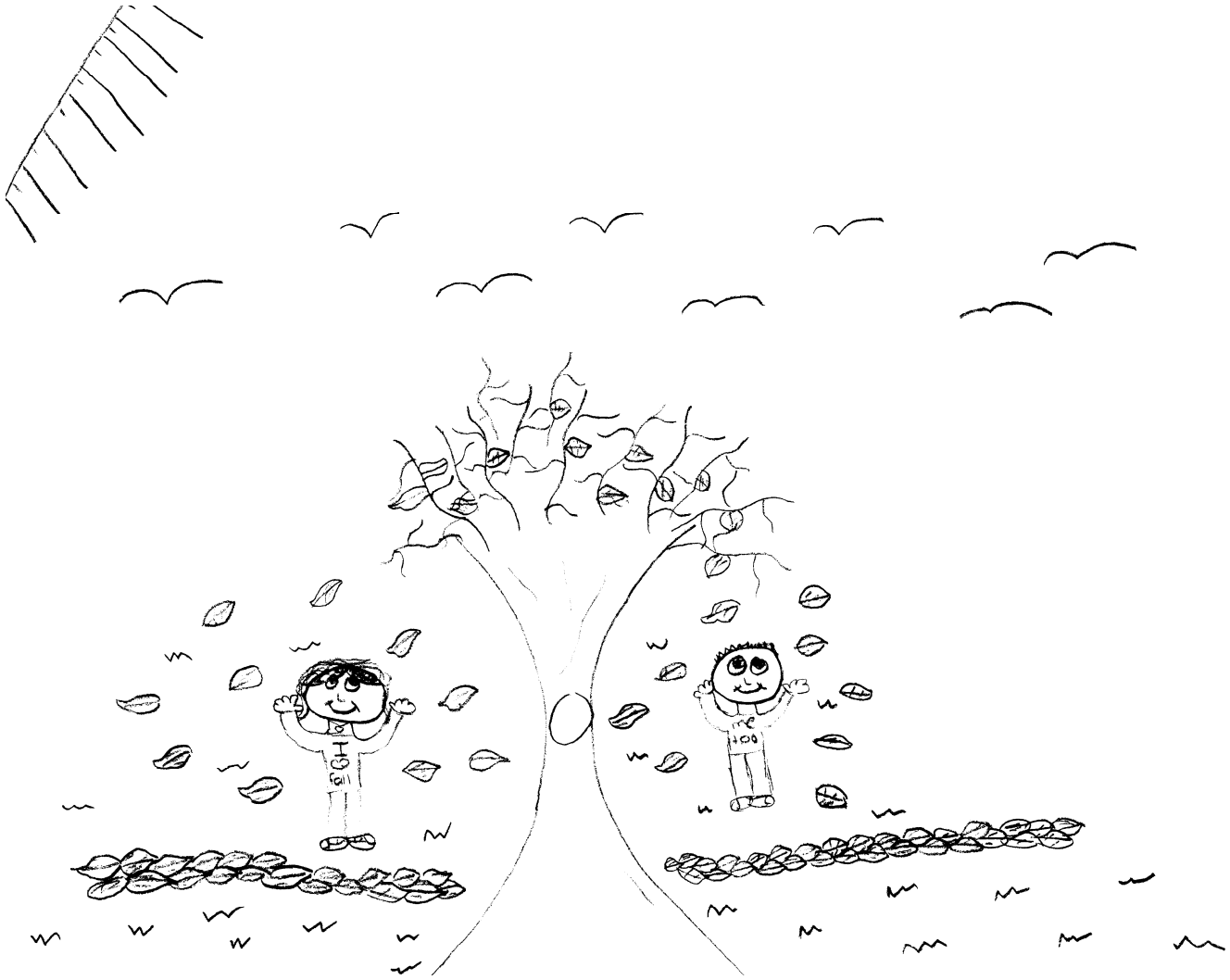

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

In This Issue

Supreme Court of Texas

Teacher Retirement System of Texas

Texas Water Development Board

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 GOVERNOR

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

Proclamation 41-3607

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of Senator Sylvia R. Garcia, and its acceptance, has caused a vacancy to exist in Texas State Senate District 6, which is wholly contained within Harris County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, the vacancy occurred on November 9, 2018, and, therefore, pursuant to Section 203.013(a) the vacancy occurred during the 60 days immediately prior to the date of convening the 86th Regular Legislative Session; and

WHEREAS, Section 203.013(c) of the Texas Election Code provides that an expedited special election must be held on a Tuesday or Saturday occurring not earlier than the 21st day or later than the 45th day after the date the election is ordered;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State Senate District No. 6 on Tuesday, December 11, 2018, for the purpose of electing a state senator to serve out the unexpired term of Senator Sylvia R. Garcia.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Friday, November 16, 2018. Early voting by personal appearance shall begin on Monday, November 26, 2018, in accordance with Sections 85.001(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of the county contained within Texas State Senate District No. 6, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special election may be held to fill the vacancy in Texas State Senate District No. 6 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 9th day of November, 2018.

Greg Abbott, Governor

TRD-201804860

♦ ♦ ♦

Akshay Patel
12th Grade

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER B. ACCESSIBILITY AND REASONABLE ACCOMMODATIONS

10 TAC §§1.201 - 1.207, 1.209, 1.210, 1.212

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 Texas Administrative Code Chapter 1, Administration, Subchapter B, §§1.201 - 1.207, 1.209, 1.210, and 1.212, concerning Accessibility and Reasonable Accommodations. The purpose of the proposed repeal is to eliminate outdated rules while adopting new, updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal of, and simultaneous adoption making changes to, the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

7. The repeal will neither increase nor decrease the number of individuals subject to the rule's applicability.

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

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes 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 would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 27, 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 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2018.

STATUTORY AUTHORITY. The repeal is proposed 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.

§1.201. Purpose.
§1.202. Definitions.
§1.203. General Certifications and Effect of Non Compliance.

§1.204. Reasonable Accommodations.

§1.205. Compliance with the Fair Housing Act.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

§1.207. General Requirements for Multifamily Housing Developments.

§1.209. Substantial Alteration of Multifamily Housing Developments.

§1.210. Renovations of Elements for Multifamily Housing Developments.

§1.212. Resources.

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 November 12, 2018.

TRD-201804848
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-1762

♦ ♦ ♦

10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, Subchapter B, §§1.201 - 1.207, Accessibility and Reasonable Accommodations. The purpose of the proposed new sections is to make changes that revise citations and references, add the Ending Homelessness Fund to covered programs, provide the statutory authority and purpose of the rules, add a section clarifying applicability of the rules, add a new section providing initial general direction in the handling of reasonable accommodations to assist property management staff, remove specific examples and create a new section that provides a list of possible non-exhaustive examples, delete §1.209(a) because there are no longer any Developments in the construction or Development process that require the exceptions that had been provided by this clause, move §1.209(b) to §1.207(c) and bring that into compliance with the Uniform Multifamily Rule, and delete 10 TAC §1.210, Renovation of Elements for Multifamily Housing Developments, to provide consistency with changes in the Uniform Multifamily Rules which now require that all developments awarded by the Department - even if for rehabilitation - will be considered Substantial Alterations, and by association removes the definition for Replacement Cost.

Tex. Gov't Code §2001.0045(b) does not apply to the rules being adopted under items (4) and (9) of that section. The rules ensure Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the proposed new rules will be in effect:

1. The new rules do not create or eliminate a government program, but relate to the readoption of this rule which makes changes to the rules that govern accessibility and reasonable accommodations.

2. The new rules do not require a change in work that would require the creation of new employee positions, nor will they reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed new rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rules are not creating a new regulation, except that they are replacing rules being repealed simultaneously to provide for revisions.

6. The rules will not limit, expand or repeal an existing regulation but merely revise rules.

7. The new rules do not increase nor decrease the number of individuals to whom these rules apply; and

8. The new rules will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated these rules and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. These rules relate to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participates in such programs, no small or micro-businesses are subject to the rules. If a small or micro-business does participate in the program, the rules provide a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because these rules relate only to a revision to rules and to subrecipients/owners and tenants of an existing program, and the rule changes primarily make minor edits and remove examples, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules relate only to the

processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rules relate only to the continuation of the rules in place there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes 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 proposed new rules will be clearer rules for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rules because the activities described by the rules have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also 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 as these rules relate only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 23, 2018, through December 27, 2018. 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, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2018.

STATUTORY AUTHORITY. The new rules 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.

§1.201. Purpose.

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov't Code §§2306.6722, 2306.6725, and 2306.6730, and the requirements of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act ("Section 504") and the Fair Housing Act for Recipients of awards from the Texas Department of Housing and Community Affairs (the "Department") including but not limited to:

(1) Community Services Block Grant;

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program and the Comprehensive Energy Assistance Program;

(3) Emergency Solutions Grant ("ESG");

(4) State Housing Trust Fund;

(5) Low Income Housing Tax Credit;

(6) Multifamily Bond Programs ("Bond");

(7) National Housing Trust Fund;

(8) Neighborhood Stabilization Program ("NSP");

(9) HOME;

(10) TCAP;

(11) TCAP-Returned Funds;

(12) Section 8;

(13) Department of Energy Weatherization Assistance Program;

(14) Homeless Housing and Services Program ("HHSP"); and

(15) Ending Homelessness Fund ("EH").

(b) Unless otherwise indicated in the applicable notice of funding availability or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

§1.202. Definitions.

Capitalized words in this Subchapter have the meaning assigned in the specific chapter and rules of the title that govern the program associated with matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this Subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act.

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site.

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, 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.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

§1.203. General Requirements and Effect of Non Compliance.

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility, and reasonable accommodations under Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include but are not limited to:

(1) operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Tex. Gov't Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this title.

§1.204. Reasonable Accommodations.

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this Chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) timely received the request and recorded it;

(B) took into consideration how action on the request would impact the person making the request and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided; and

(C) engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than three business days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed three business days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.

(e) When a participant, applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot and no deposit for service/assistance animals).

(f) A Recipient may not charge a fee or place conditions on a participant, occupant, or applicant in exchange for making the accommodation.

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited by any particular accessible code specification.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient must give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Reasonable Accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures;

(ii) the approved amount must normally be able to be replenished through property rental income within one year without a corresponding raise in rental rates; and

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is some evidence that the Alteration would be an undue financial and administrative burden.

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Reasonable Accommodation.

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Reasonable Accommodation.

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service animal in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(j) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.

§1.205. Compliance with the Fair Housing Act.

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) The Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) new construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) all Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter:

(1) new construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) all Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

(c) Recipients of ESG, EH, and HHSP funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

§1.207. General Requirements for Multifamily Housing Developments.

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing rules in this title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) distributed throughout the Development and site; and

(2) made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5 percent of Units that are accessible to persons with mobility impairments, and a minimum of 2 percent of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671.

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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David Cervantes
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SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §1.410

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410, relating to Determination of Alien Status for Program Beneficiaries. The purpose of the proposed section is to address concerns identified by the U.S. Department of Health and Human Services ("HHS") in a recent monitoring of the Department for the Low Income Home Energy Assistance Program ("LIHEAP") and to provide clear guidance to any private nonprofit subrecipients doing business with the Department that receive funds from the Department for a federal program for which the federal oversight agency has indicated that legal status is required to receive a benefit as further provided for in Personal Responsibility and Work Opportunity Reconciliation Act of 1986 ("PRWORA").

Tex. Gov't Code §2001.0045(b) does not apply to the new rule because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. Compliance with the new rule is intended to ensure adherence to federal law, Tex. Gov't Code Chapter 2306, Subchapter E, and provide for the implementation of this activity.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides interpretation and guidance for how the Department, and its subrecipients of certain federal funds, will comply with PRWORA.

2. The new rule does not reduce work load such that any existing employee positions can be eliminated. The new rule may create a change in work that could require the temporary or permanent creation of new employee positions. The rule as drafted provides options for how the Department will ensure verification of legal status is occurring, if required by the federal oversight agency, when the Department's subrecipient organization is a private nonprofit, who is exempt under PRWORA from having to perform such verification. One of the options provided for how a private nonprofit subrecipient might elect to ensure compliance is occurring with the households they serve would be for the nonprofit to gather and transmit client information to the Department (or a third party procured by the Department) so that verification can occur. If the Department in fact is unable to identify a third party to perform such verifications, it may have to perform them which would require staffing. It is estimated that this option could require from two to four FTEs.

3. The new rule does not require additional future legislative appropriations. If employee positions are needed as noted above, resources to cover the costs of those positions would come from federal LIHEAP administrative funds, not additional appropriations. If a third party is procured by the Department as referenced above, that also would be funded through federal LIHEAP administrative funds.

4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is creating a new regulation, but only to the extent that it formalizes the methods by which a federal program requirement is implemented. The requirement prompting the rule is a condition of receiving federal LIHEAP and DOE funds.

6. The new rule will not expand or repeal an existing regulation, but formalizes the methods by which a federal program requirement is implemented. The federal program requirement could be considered to "limit" this activity because the new rule will require verification of legal status of household members applying for assistance from certain programs. Those programs are federally limited to be provided only to those applicants who are United States Citizens, United States Nationals, or Qualified Aliens. Applicants not able to provide proper documentation of United States legal status (i.e., Unqualified Aliens) will not receive assistance and households containing Unqualified Aliens may receive a lesser amount of assistance, or be denied assistance altogether depending on the income level of the household. This potentially limiting action of verification is necessary to ensure compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. §8624(b)(2)) which was identified by HHS in a recent monitoring of the Department.

7. The new rule will potentially decrease the number of individuals subject to the rule as described in 6 above.

8. The new rule will not negatively nor positively affect this state's economy. While some households currently eligible for the program may no longer qualify for assistance, there are other qualified households who will be eligible, so no reduction in actual program funding expended in communities is expected.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule is only applicable to nonprofits and local governments that are designated as community action agencies, there will be no economic effect on small or micro-business or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how existing subrecipients of the Department will handle a particular step in verification of household eligibility, and that the rule is applied statewide, the rule does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, 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 changes needed to address concerns identified by the U.S. Department of Health and Human Services ("HHS") in a recent monitoring and to ensure compliance with federal PRWORA requirements that ensure that no federal benefits are provided to Unqualified Aliens.

There may be a possible small economic cost to participating network organizations if they opt to bring their operations and processes into compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. §8624(b)(2)) which was identified by HHS in a recent monitoring of the Department. If a current subrecipient is unable to agree to perform under one of the options provided by the rule, the Department will have no other way to ensure verification is occurring as required by HHS. Because HHS has affirmed that the Department (and the Subrecipient) take on financial liability for any potential disallowed costs associated with serving an ineligible household, the Department cannot allow Subrecipients to opt out of all options and have no verifications performed as this increases the potential liability for the state. The Department would therefore be compelled to identify an alternate subrecipient that can ensure such verification. This would require rebidding those portions of the network that do not elect one of these options. If such a rebidding occurred, some costs would be involved as the new replacement provider is trained, and clients transitioned; however, such costs would be eligible federal program expenses covered by program administrative funds.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also 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 because any such costs related to this rule discussed above will be paid for with federal funds.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 27, 2018, to receive input on the proposed 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 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, DECEMBER 27, 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 new section affects no other code, article, or statute.

§1.410. Determination of Alien Status for Program Beneficiaries.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 ("PRWORA"), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) 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).

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

(5) Subrecipient--An entity that receives federal or state funds passed through the Department.

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

(c) Applicability for Federal Funds.

(1) Applicability. The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA, even if certain exemptions under PRWORA may exist as further provided in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d) a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Housing Energy Assistance Program and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. If no such election is made by the deadline, Subrecipient will no longer be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by Subrecipient to select an option by the deadline is good cause for nonrenewal of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) the Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) the Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by ap-

plicable federal program guidance or as determined by other program rules under this Title.

(D) If no election is made by the deadline in paragraph (2) of this subsection, the Subrecipient will be provided notification under Tex. Gov't Code Chapter 2105 that the Department does not intend to renew the Contract with Subrecipient at the end of the current Contract Term. The Subrecipient may have a right to request a hearing under Tex. Gov't Code Chapter 2105.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

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 November 12, 2018.

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David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

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10 TAC §1.411

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code. The purpose of the proposed section is to provide compliance with Tex. Gov't Code Chapter 2105 which governs the administration of federal block grants, and provide one uniform rule that provides Subrecipients and Administrators under the Community Services Block Grant ("CSBG") program, the Low Income Home Energy Assistance Program ("LIHEAP") and the Community Development Block Grant ("CDBG") Program, which funds the Colonia Self-Help Centers, with clear rule-based guidance relating to Chapter 2105.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9) of that section, ensuring Department compliance with legislation. Despite this exception, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides guidance for how the Department and its subrecipients of certain federal funds, will comply with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

2. The new rule does not reduce work load such that any existing employee positions can be eliminated nor does it create work that require new employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is creating a new regulation, but only to the extent that it provides clear guidance to Subrecipient on adherence to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

6. The new rule will not expand or repeal an existing regulation.

7. The new rule will neither increase nor decrease the number of individuals subject to the rule, as Administrators and Subrecipients are already subject to the provisions of Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

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

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule is only applicable to nonprofits and local governments that are designated as community action agencies that are already subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, there will be no economic effect on small or micro-business or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how subrecipients and administrators will be subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, and that the rule

is applied statewide, the rule does not change issues affecting employment, and there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, 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 clear guidance provided to Subrecipients and Administrators on compliance with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also 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.

REQUEST FOR PUBLIC COMMENT The public comment period will be held November 23, 2018, to December 27, 2018, to receive input on the proposed 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 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, DECEMBER 27, 2018.

STATUTORY AUTHORITY. The new section is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules and Chapter 2105.

Except as described herein the new section affects no other code, article, or statute.

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

(a) Purpose. The purpose of this rule is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant ("CSBG") funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program ("LIHEAP") funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant ("CDBG") Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than $5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient.

(e) Right to Request a Hearing on Denial of Services or Benefits. As provided for in Tex. Gov't Code §2105.151 and §2105.154, an affected person who alleges that a Subrecipient has denied all or part of a service or benefit funded by funds under a program that is subject to this subchapter in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request and have a timely hearing provided by the Department in the Service Area of the Subrecipient, and the requested hearing will be an administrative hearing under Tex. Gov't Code Ch. 2001.

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of $10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecpient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001

if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to 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.

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David Cervantes
Acting Director
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For further information, please call: (512) 475-1762

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CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Project Access Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Project Access program.

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

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes 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 would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 27, 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 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, DECEMBER 27, 2018.

STATUTORY AUTHORITY. The repeal is proposed 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.

§5.801. Project Access Initiative.

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 November 12, 2018.

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David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-1762

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10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the proposed new section is to make changes that bring the rule up to date, streamline language, provide for one definition of disability for consistency and equity in handling client eligibility, and to specify the unique federal criteria required of two funding sources within the program - Mainstream Voucher Program vouchers and Non-Elderly Disabled Vouchers.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, it should be noted that no costs are associated with this action that would prompt a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule that governs the Project Access program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will neither negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for the Project Access Program which provides Section 8 Housing Choice Vouchers for persons with disabilities exiting institutions so that they can live in community-based settings. The Program assists individuals directly, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a program rule that applies only to the recipients of the voucher, and the rule changes primarily make minor edits and add consideration for how the Mainstream Voucher Program will incorporate into the Project Access program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to individuals who may receive a voucher; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." The Project Access program is a statewide program so there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes 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 proposed new rule will be a more clear rule for recipients and assurance of the program having compliant regulations that reflect how the Mainstream Voucher Program is addressed within the Project Access program. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also 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 as this rule relates only to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 23, 2018, through December 27, 2018. 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, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2018.

STATUTORY AUTHORITY. The new rule 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.

§5.801. Project Access Initiative.

(a) Purpose. The Project Access Program ("PA Program") is a program that utilizes federal Section 8 Housing Choice Vouchers, Non Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that applies to the Department's Section 8 program that was a prior resident of an Institution.

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

(3) Institution--Congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes, but is not limited to, a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in subsection (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(4) Mainstream Vouchers ("MVP")--HUD's Mainstream Voucher Program.

(5) Non Elderly Disabled ("NED")--HUD's Non Elderly Disabled Program.

(6) Section 8--HUD's Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including, but not limited to, criterion at 24 CFR Part 982 apply to the program.

(d) Project Access in the Department's PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in subparagraphs (A) and (B) of this paragraph.

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) an At-Risk Applicant that meets the criteria of subclause (I) or (II) of this clause:

(I) A current recipient of Tenant-Based Rental Assistance ("TBRA") from a HOME Investment Partnership Program and within six months prior to expiration of that TBRA assistance; or

(II) A household with a household member who meets the criteria of an At-Risk Applicant and has lost their TBRA from a HOME Investment Partnership Program due to lack of available funding.

(ii) be a resident of an Institution at the time of voucher issuance.

(2) NED and Mainstream Vouchers have these additional eligibility criteria which are:

(A) The household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) For NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) For NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable Health and Humans Services Commission ("HHSC") funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the HHSC for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department's Waiting List for PA vouchers will be kept "open" and the Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in subsection (f)(1) of this section is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist to ensure that the Department is utilizing all NED and Mainstream Vouchers before issuing other Section 8 Vouchers.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) Applied for the PA Program and was placed on the waiting list prior to transition out of the institution; and

(B) Received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.

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 November 12, 2018.

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David Cervantes
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Texas Department of Housing and Community Affairs
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CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants ("ESG") §§7.31 - 7.44. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.094 and to update the rule to clarify the eligible uses of the grant, codify the formula utilized to allocate funds, establish selection criteria for Applications for ESG funds, outline Contract terms and requirements, and provide guidance for requirements for administration of the ESG funds.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (4) of that section, relating to its necessity to receive a source of federal funds or to comply with federal law. Despite this exception, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program. This rule provides for clarification and guidelines for administration of the ESG grant, and codifies requirements previously provided in notices of funding availability. Inclusion in rule will allow for greater transparency and opportunity for public comment, as well as consistency in administration of the grant which benefits the subrecipients and beneficiaries of the ESG Program.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The proposed new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule now reflects requirements previously elaborated only in notices of funding availability and contracts. However, the added requirements were applicable through rules and contracts so are not new requirements in most cases. These changes are necessary to ensure compliance with federal requirements governing the ESG Program.

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

8. The proposed new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.094.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that because this rule is only applicable to nonprofits and local governments that are eligible subrecipients of ESG funds, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because the rule only applies to administration of an established grant; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the amount of funding is not decreased or increased,

and this rule only provides clarification for administration of an existing grant program, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, 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 sections will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through notices of funding availability and contractual requirements.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only provides clarification for administration of an existing grant program.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to January 2, 2019, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 8711-3941, by fax to (512) 475-0220, or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, JANUARY 2, 2019.

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.

§7.31. Purpose.

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grant ("ESG") Program as authorized by Tex. Gov't Code §2306.053. ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations in this subchapter govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the "Act"), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act ("HEARTH Act").

(c) In addition to this subchapter, an ESG Subrecipient shall comply with the regulations applicable to the ESG Program as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Part 91 and 24 CFR Part 576 (the "Federal Regulations"). ESG Subrecipients must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, an ESG Subrecipient shall comply with such requirements at the time they become effective.

§7.32. Use of ESG Funds.

(a) The purpose of ESG is to assist people in regaining stability in permanent housing quickly after experiencing a housing crisis and/or Homelessness.

(b) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homeless prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems ("HMIS") activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

(c) Subrecipients may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(d) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a Notice of Funding Availability, or by Contract.

(e) Program Participant services may be provided under street outreach, emergency shelter, homeless prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(f) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants.

(g) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement ("GED") preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Renovation, rehabilitation or conversion of buildings for use as emergency shelter;

(B) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available; and

(C) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(h) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees, last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees, last month's rent.

(i) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(j) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. A portion of these Administrative funds in an amount not to exceed .25 percent of the Department's total allocation of ESG funds may be retained by TDHCA to procure entities to administer a Local Competition for funding within a CoC region. Funds for Administrative or Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services. Additionally, if the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Retained funds are not subject to the Allocation Formula.

(b) ESG funds not retained for the purposes outlined above will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30 percent Area Median Family Income ("AMFI"), as calculated in the U.S. Department of Housing and Urban Development's ("HUD") Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs; and

(4) Negative fifty percent weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(c) Each CoC region is allocated a minimum amount of $100,000. This is accomplished by taking the amounts of all regions with over $100,000 during the initial allocation and redistributing a proportional share to the regions with less than $100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with $100,000, then the funds will be split evenly among the COC regions.

(d) Those ESG funds allocated based on the formula in subsection (b) of this section will be made available for the provision of Program Participant services, and will be made available through a NOFA which may be released on an annual or biennial basis.

(1) Not more than 60 percent of allocated funds may be awarded for the provision of street outreach and emergency shelter activities.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Applicant must apply for an award amount of at least $50,000 and not more than $300,000 for all Program Participant services proposed in the Application.

(B) Funds awarded for HMIS are limited to 12 percent of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(e) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (b) - (d) of this section.

§7.34. Local Competition for Funds.

(a) TDHCA may procure contractors for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the COC region or COC regions in which a contract is awarded.

(b) Application materials, other than those created by the Department that will be utilized by an ESG Coordinator during a CoC Local Competition are subject to Department review prior to the Application acceptance period, and must not conflict with §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Applicants recommended to the Department by the ESG Coordinator after a CoC Local Competition must satisfy the general threshold criteria established in §7.36 of this subchapter (relating to General Threshold Criteria under a Department NOFA), and establish performance targets as required by §7.40 of this subchapter (relating to Program Participant Services Selection Criteria).

(c) The ESG Coordinator must submit Applications recommended for funding under the CoC Local Competition to the Department prior to award recommendations being made by the Department to its Board. The recommendations must utilize all funding available in the region, unless all eligible Applications received are funded, and there is a remaining balance in the region. An Applicant that applies in a Local Competition for funding is not eligible to be awarded funding in the TDHCA funding competition.

(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.

§7.35. Eligible Applicants.

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA.

§7.36. General Threshold Criteria under a Department NOFA.

(a) Applications submitted to the Department in response to a NOFA are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region or other geographic limitation, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) For a NOFA under the Allocation Formula, a Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100 percent Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of $50,000 are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed $100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match funding will be ineligible for an ESG award.

(7) For a NOFA under the Allocation Formula, evidence from the CoC Lead Agency in the region that the Applicant consulted

with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of Data Universal Numbering System ("DUNS") number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(11) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted no later than 30 calendar days after the Application submission deadline as specified in the NOFA. If the documentation is not received by the Department within 30 calendar days of the Application submission deadline, the emergency shelter funding components in the Application will be removed from consideration in the Application review; the amount requested will be reduced by the amount that had been designated for emergency shelter funding; any points requested for emergency shelter activities will be deducted from the self-score and final score; and performance for emergency shelter component will be removed from expected deliverables.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be within 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to the Appeals Process).

§7.37. Application Review and Administrative Deficiency Process for Department NOFAs.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA. Applications will be reviewed for threshold criteria and selection criteria, administrative deficiencies, and then ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m. Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

§7.38. Award and Funding Process for Allocated Funds.

(a) An Applicant recommended to the Department by the ESG Coordinator after a Local Competition may be awarded funding, pending Previous Participation Review and Board approval. If the Applicant does not meet the requirements of the Previous Participation Review or the Board does not approve the recommendations of the ESG Coordinator, if there is another scheduled Board meeting before the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), the Department will provide the ESG Coordinator the option to revise the list of recommended Applicants and recommended award amounts in order to still recommend awards for the full amount of funding in the region. If there are any funds in a CoC region for which an ESG Coordinator administered the CoC Local Competition process that are not recommended for an award by the ESG Coordinator or not approved by the Board, and there are no other Applicants in the COC region or the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), these funds will be added into other resources as described in subsection (j) of this section.

(b) An Application may be submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, and/or rapid re-housing, per §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Each Application submission will include one uniform Application with information applicable across all Program Participant service types,

and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(c) Applications submitted directly to the Department for consideration in COC areas in which there is not an ESG Coordinator will receive points based on experience, program design, budget, previous performance, collaboration, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(d) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(e) Tie breakers. Each Application submitted to the Department shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(f) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each COC region as determined in this subchapter, an Applicant may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(g) Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the COC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Subsection (e) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60 percent of the funding available in the CoC region. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60 percent of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60 percent for the region. If no funds remain available that would not exceed 60 percent at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the second level of the award process described in subsection (h) of this section, if no more than 60 percent of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the CoC region to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the CoC region, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the second level of funding recommendations.

(h) The second level of recommendations is available only to Applications in CoC regions where the initially allocated funds were not fully awarded under the first level of recommendations. Remaining funds after the completion of the first level of funding will be collapsed from CoC regions which had insufficient eligible Applications to utilize the entire Allocation Formula amount. This collapse of funds will be made available to Applicants within each of the CoC regions that are determined to be underfunded based on total award recommendations within the CoC, and their respective Allocation Formula amount. Applications eligible for an award will be ranked first by the degree to which their CoC region was underfunded, and then by Application score.

(1) The Department will determine the degree to which a CoC region is underfunded by dividing the total funds recommended through the first level of funding recommendation by the amount of funds that were initially allocated to the CoC region according to the Allocation Formula. Regions where this percentage is greater than zero and less than 100 will be ranked in order, such that the lowest percentage funded is the highest degree underfunded and therefore has the highest priority. Subsection (e) of this section will be used to determine the outcome of tied scores. The highest ranking unfunded Applicant in the most underfunded region will be recommended for an award of full funding if sufficient funds remain available for funding or a partial award of funds if an insufficient statewide balance remains.

(2) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If 60 percent of the total allocated funding available has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended, and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(A) An Application which is otherwise eligible for funding within the second level, except that requested funds exceed the amount available for street outreach and emergency shelter, may

be offered a partial award of funds. In no event shall the partial award cause the Department to award funds in excess of 60 percent of allocated funds for street outreach and emergency shelter.

(B) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Applications ranking would not be affected. If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters their scoring rank within this second level of funding recommendations, the opportunity to be funded from this second level of recommendations will not be offered to this Applicant.

(3) As long as collapsed funds remain available, the process continues with the next highest ranked unfunded Application within the highest underfunded region receiving a recommendation for an award. When more than one CoC region is equally underfunded, the CoC region with the highest ranked unfunded Application will first be offered the funding. It is anticipated that only one Application will be funded per underserved CoC region during the second level of recommendations, but the process will continue until the earlier of all CoC regions with sufficient eligible Applicants are recommended for funding up to their Allocation Formula amount, or no collapsed funds remain. If an Applicant declines the final offer of a partial award, or is unable to maintain their rank within their region, then the next highest ranked unfunded Application in the region will have an option to receive the remaining funds. This offer will be made only one time per region in the second level of recommendations. If no other eligible Application exist, the next most underfunded regions highest application will be offered the funds. Any funds remaining after all underfunded regions have had the opportunity to be fully funded will be utilized in the third level of funding recommendations.

(i) If any funds remain after recommendations for all eligible Applications in the second level of recommendations is completed, such funds shall collapse and be made available statewide.

(1) All eligible Applications not recommended to be awarded under the first two levels of funding recommendations will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in this level of funding starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60 percent of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the third level of recommendations and the 60 percent capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded. This offer will be made only one time per region in the third level of recommendations.

(j) If there are still funds available after the third level of recommendations, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50 percent greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(k) In the event that the Department elects to include a provision to award funds biennially, the distribution of funding for the second funding cycle is contingent upon the amount of the ESG allocation granted to the Department in the subsequent federal fiscal year. An ESG Subrecipient that does not satisfy the requirements of the Previous Participation Review or is not approved by the Department's Governing Board is ineligible for funding. An ESG Subrecipient may have the right to appeal funding decisions per §1.7 of this title (relating to the Appeals Process). When the total amount of ESG funding in the subsequent year is less than 100 percent of the first year's funding, awards will be reduced proportionally.

(1) When the total amount of ESG funding in the subsequent year's Allocation Formula is greater than 100 percent of the first year funding or if there are funds available from reduced awards, the additional funding will be used first to increase any partial awards to ESG Subrecipients that have met their first Expenditure benchmark. The funds will be divided by the number of ESG Subrecipients with partial awards who met the first Expenditure benchmark in year one. This amount or the amount needed to increase the partial awards up to the original Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until funds are exhausted.

(2) Funds remaining after the partial award increase under paragraph (1) of this subsection will be awarded to ESG Subrecipients in proportion to the ESG allocation. The budget and Performance targets would be adjusted proportionally to the funding. If the subsequent year allocation (after subtracting the amounts allocated under paragraph (1) of this subsection) is equal to or less than 150 percent of the first year of allocation, ESG Subrecipients may be offered an award of funds not to exceed 150 percent of their first award of funding under the NOFA.

(3) Funds remaining after increasing ESG Subrecipients to 150 percent of their original award will be offered to fully or partially fund the next highest ranking Applications from the ESG competition for a 12-month period.

(l) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. Uniform Selection Criteria.

An Application for funding allocated in accordance with §7.33(b) of this subchapter(relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless assists in constructing, renovating, or maintaining the Applicant's ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for the Applicant's or its management's experience administering federal or State programs.

(A) An Application may receive a maximum of six points for Applicant's or its management staff with one to five years of experience; or

(B) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of five points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s) administered by the Applicant that were subject to the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, or met the second Expenditure benchmark without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Three points if the Applicant expended 91-94 percent of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments;

(B) Four points if the Applicant expended 95 percent to less than 100 percent of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments; or

(C) Five points if the Applicant expended 100 percent of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of five points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s) that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under all of the subparagraphs (A) - (E) of this paragraph not to exceed a total of five points. The Outcome percentages will be averaged among all prior ESG Contracts that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) One point if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) One point if the Applicant met 100 percent or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) One point if the Applicant met 100 percent or more of their emergency shelter exits to permanent housing;

(D) One point if the Applicant met 100 percent or more of their Homeless prevention target for maintaining housing for three months or more; and

(E) One point if the Applicant met 100 percent or more of their rapid re-housing target for maintaining housing for three months or more.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility; or

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements.

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of $5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one

county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum of:

(A) Five points if at least one county within the Service Area as stated in the Application did not receive an award of ESG funds from the Department within the previous federal funding year; or

(B) Ten points if no portion of the Service Area has received ESG funds within the previous federal funding year.

§7.40. Program Participant Services Selection Criteria.

(a) An Application for funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Street outreach CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110 percent of the total ESG funds requested for street outreach.

(3) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70 percent of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80 percent of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90 percent of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95 percent of persons served who are in one or more Homeless Subpopulation;

(E) Five points based on a minimum target of 100 percent of persons served who are in one or more Homeless Subpopulation;

(4) Street outreach temporary/transitional/permanent housing. An Application may receive a maximum of five points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25 percent of persons served with street outreach who will be placed in temporary housing;

(B) Three points based on a minimum target of 35 percent of persons served with street outreach who will be placed in temporary housing;

(C) Four points based on a minimum target of 45 percent of persons served with street outreach who will be placed in temporary housing; or

(D) Five points based on a minimum target of 55 percent of persons served with street outreach who will be placed in temporary housing.

(5) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(6) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Emergency shelter CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110 percent of the total ESG funds requested for emergency shelter.

(3) Emergency Shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70 percent of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80 percent of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90 percent of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95 percent of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100 percent of persons served who are in one or more Homeless Subpopulation;

(4) Emergency shelter permanent housing. An Applicant may receive a maximum of five points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25 percent of persons served with emergency shelter who will be placed in permanent housing;

(B) Three points based on a minimum target of 35 percent of persons served with emergency shelter who will be placed in permanent housing;

(C) Four points based on a minimum target of 45 percent of persons served with emergency shelter who will be placed in permanent housing; or

(D) Five points based on a minimum target of 55 percent of persons served with emergency shelter who will be placed in permanent housing.

(5) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(6) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Homeless prevention CoC collaboration. An Application may receive a maximum of 10 points for support from the CoC under which the Application is submitted. An Application may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110 percent of the total ESG funds requested for homelessness prevention.

(3) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70 percent of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80 percent of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90 percent of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95 percent of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100 percent of persons served who have one or more special needs.

(4) Homeless prevention maintaining housing. An Application may receive a maximum of five points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) Two points based on a minimum target of 40 percent of persons served with homelessness prevention maintaining housing for three months;

(B) Three points based on a minimum target of 50 percent of persons served with homelessness prevention maintaining housing for three months;

(C) Four points based on a minimum target of 60 percent of persons served with homelessness prevention maintaining housing for three months; or

(D) Five points based on a minimum target of 70 percent of persons served with homelessness prevention maintaining housing for three months.

(5) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance;

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance;

(6) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Rapid re-housing CoC collaboration. An Application may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110 percent of the total ESG funds requested for rapid re-housing.

(3) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70 percent of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80 percent of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90 percent of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95 percent of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100 percent of persons served who are in one or more Homeless Subpopulation.

(4) Rapid re-housing maintaining housing. Applicants may receive a maximum of five points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) Two points based on a minimum target of 40 percent of persons served with rapid re-housing maintaining housing for three months;

(B) Three points based on a minimum target of 50 percent of persons served with rapid re-housing maintaining housing for three months;

(C) Four points based on a minimum target of 60 percent of persons served with rapid re-housing maintaining housing for three months; or

(D) Five points based on a minimum target of 70 percent of persons served with rapid re-housing maintaining housing for three months.

(5) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(6) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. Contract Term, Expenditure Benchmarks, and Return of Funds.

(a) The Contract Term for allocated funds may not exceed 12 months under a one-year funding cycle. The initial Contract Term for allocated funds and may not exceed 12 months under a two-year funding cycle, but may be amended to include an additional 12 months if allocated funds are awarded to the Applicant in the second year of the funding cycle. The Contract Term for a two-year funding cycle shall not exceed 24 months, as amended, unless an extension has been granted in accordance with this section.

(b) Expenditure benchmarks are ineligible for extension, except that an extension may be granted for expenditure benchmark two or four. A request to extend an expenditure benchmark must support that the extension is necessary to provide services required under the Contract, must evidence good cause for failure to meet the benchmark, and is subject to approval by the Department.

(1) The Division Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that do not exceed one month.

(2) The Executive Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that does not exceed three months.

(3) If the Subrecipient requests to extend the Contract Term or Expenditure benchmark for more than three months, but less than six months, Board approval is required. Extensions for greater than six months may not be granted.

(4) Extensions will be considered on a cumulative basis.

(c) Expenditure benchmarks for 12 or 24 month Contracts are listed in paragraphs (1) - (4) of this subsection, unless otherwise stated in the Contract as amended. For Contracts with a 12-month term, the third and fourth Expenditure benchmarks do not apply.

(1) Expenditure benchmark one: Subrecipient is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 50 percent of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met the first Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term.

(2) Expenditure benchmark two: A Subrecipient is required to have reported expenditures in its first 12 Monthly Expenditure Reports reflecting at least 100 percent of the Contracted funds. A Subrecipient that has not met the second Expenditure benchmark, or that has not timely submitted Monthly Expenditure Reports, is subject to deobligation of funds.

(3) Expenditure benchmark three: A Subrecipient awarded funds in the second year of a two-year funding cycle is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 75 percent of the Contracted funds by month 21 of the amended Contract. Subrecipients that have not met the third Expenditure benchmark evidencing the ability of the Subrecipient to expend the remaining funds by end of the amended Contract Term.

(4) Expenditure benchmark four: Subrecipients awarded funds in the second year of a two-year funding cycle are required to have reported expenditures in its last Monthly Expenditure Report reflecting at least 100 percent of the Contracted funds expended. Funds remaining after the deadline for submission of the last Monthly Expenditure Report are subject to deobligation of funds.

(d) Funds remaining at the end of Contract's close out period will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) Prior to the Expenditure benchmarks two and four, as applicable, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department, if the Subrecipient expects it will not fully expend and wishes to avoid deobligation or a reduced second funding cycle if awarded during a two-year cycle. Voluntary return of funds prior to the Expenditure benchmark will not impact future funding recommendations.

(f) The Department may request information regarding the performance or status of a Contract prior to a Contract benchmark, or at various times during the term of a Contract. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, default of the Contract, and ultimately in termination of the Contract by the Department.

(g) If additional funds become available through deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds will be offered to the ESG Subrecipients with active contracts with the highest expenditure rate, as of the most recent Monthly Expenditure Report. These funds will be offered first to the ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide. The funds may increase the Contract of an ESG Subrecipient one time by up to 25 percent of the original Contract amount. Upon Board Approval, the Department may elect to reallocate retained funds by this method.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that ESG requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to Inclusive Marketing outlined in §7.10 of this chapter (relating to Inclusive Marketing).

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of ESG funds. Activities for which

the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization ESG Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ESG funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(i) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(j) In instances where a potential conflict of interest exists related to a beneficiary of ESG assistance, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No ESG funds will be committed to assist a Household until HUD has granted an exception.

(k) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan by no later than June 14, 2017, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipients will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible ESG costs that supplement the ESG program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the deposit is returned to the Subrecipient, it is program income, and must be treated as described in this section.

(d) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

§7.44. Program Participant Eligibility and Program Participant Files.

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements.

(1) The Applicant must keep income documentation for Program Participants receiving homelessness prevention or being re-certified for rapid re-housing. The Department offers Income Certification and Income Screening Tool forms, which may be used by the Applicant.

(2) The Department's Declaration of Income Statement ("DIS") form must be utilized if income cannot be documented for Program Participants receiving homelessness prevention or being recertified for rapid re-housing. The DIS must be completed and signed by Program Participants for activities that have an income requirement. The DIS is not subject to provisions in HUD Handbook 4350.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into ESG, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The ESG Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assis-

tance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).

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 November 12, 2018.

TRD-201804857
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-0908

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10 TAC §§7.2001 - 7.2007

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 7, Homelessness Programs, Subchapter C, Emergency Solutions Grants ("ESG"), §§7.2001 - 7.2007. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Cervantes has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grant ("ESG") Program.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the ESG Program.

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

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more transparent reflection of the program's requirements. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to January 2, 2019, at 5:00 p.m., Austin local time, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Abigail Versyp, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email abigail.versyp@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, JANUARY 2, 2019.

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.

§7.2001. Background.

§7.2002. Purpose and Use of Funds.

§7.2003. Availability, Distribution, and Redistribution of ESG Funds.

§7.2004. Eligible Applicants.

§7.2005. Program Income.

§7.2006. Environmental Clearance.

§7.2007. VAWA 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 November 12, 2018.

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David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-0908

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §23.24

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability Of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, And Resale And Recapture Of Funds, §23.24, Administrative Deficiency Process. The purpose of the proposed amended section is to update the rule to allow the submission of a corrected Resolution after the application review deficiency deadline for all HOME applications to prevent termination of the application. The current HOME Rules state that administrative deficiencies of a HOME application that are not resolved to the Department's satisfaction by the deficiency cure period substantiate termination of the application. The proposed amendments to §23.24 allow a corrected Resolution in response to a deficiency to be submitted to the Department without penalty and avoid the termination of an application because of a minor clerical error that applicants may not resolve before the application deficiency deadline.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it has been determined that no costs are associated with this amendment, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed rulemaking would be in effect:

1. The proposed rule amendment does not create or eliminate a government program, but relates to the amending of this rule which makes changes to one narrow aspect of an existing activity, the acceptance of resolutions as it relates to the administration of the HOME Program.

2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed amendment does not require additional future legislative appropriations.

4. The proposed amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed amendment is not creating a new regulation.

6. The proposed amendment will not expand, limit, or repeal an existing regulation, but merely clarifies an acceptable timeframe for receiving a corrected resolution from a subrecipient.

7. The proposed amendment will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed amendment will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed amendment and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule amendment does not contemplate nor authorize a taking by the Department, therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed amendment has no economic effect on local employment because this rule only applies to the administrative process of application review; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, 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 an updated and more flexible rule. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to a deficiency process already in place for applicants pursuing HOME funding.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 26, 2018, to

receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, HOME and Homeless Programs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220 or by email to the following address: HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, on December 26, 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 amended sections affect no other code, article, or statute.

§23.24. Administrative Deficiency Process.

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle NOFA, including an Application for an RSP Agreement. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., Austin local time, on the fifth business day following the date of the deficiency notice, the application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply, and the application fee shall be waived for an Application submitted within 30 days of the termination of an Application.

(d) Administrative deficiencies for HOME Applications under a Competitive Application Cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then one [~~(1)~~] point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time, on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the Contract start date.

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 November 12, 2018.

TRD-201804854
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-0908

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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §23.51

The Texas Department of Housing and Community Affairs (the "Department") proposes an amendment to 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Program, §23.51, Contract for Deed ("CFD") General Requirements.

The purpose of amending this rule is to expand the funding of CFD activities statewide, and to increase the AMFI for eligible households from 60 percent to 80 percent. Currently, the CFD Program is restricted to areas that meet the definition of a colonia as defined in Tex. Gov't Code, Chapter 2306. Newer, very large subdivisions that share characteristics of a colonia, but do not meet the Chapter 2306 definition would benefit from CFD funding but are unable to be funded under the current rule. Proposed amendments to §23.51 would continue to limit CFD funding to areas that meet the definition of a colonia, but only for a period of time; the CFD funds would then be made available in non-colonia areas. Because funds are currently not fully utilized it is hoped that by expanding the AMFI, more households in a contract for deed will be eligible to participate.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it has been determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed rulemaking would be in effect:

1. The proposed rule amendment does not create or eliminate a government program, but relates to amending this rule which makes narrow changes to adjust the eligibility within an existing activity, the Contract for Deed activity within the HOME Program.

2. The proposed amendment does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed amendment does not require additional future legislative appropriations.

4. The proposed amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed amendment is not creating a new regulation.

6. The proposed amendment will not expand, limit, or repeal an existing regulation.

7. The proposed amendment will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed amendment will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this proposed amendment and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed rule amendment does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed amendment as to its possible effects on local economies and has determined that for the first five years the rule amendment will be in effect the proposed rule amendment may provide a possible positive economic effect on local employment. This amendment provides the possibility that program applicants not currently accessing these funds may do so, which could infuse funds into the local financial market. However because location of where program funds or development are directed is not determined in rule, that impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, 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 to allow CFD funds to be used in Contract for Deed situations that occur outside of a colonia and to assist households up to 80 percent AMFI. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to expanded opportunities for eligibility to apply for funding.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 23, 2018, to December 26, 2018, to receive input on the amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Abigail Versyp, HOME and Homeless Programs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220 or by email to the following address: HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, on December 26, 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 amended sections affect no other code, article, or statute.

§23.51. Contract for Deed (CFD) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Acquisition [~~acquisition~~] or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) Refinance [~~refinance~~] with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 80 [~~60~~] percent ("AMFI") [~~(AMFI)~~] and the Household must complete a homebuyer counseling program/class.

(d) The Department shall limit the availability of funds for CFD for a minimum of 60 calendar days for Activities proposing to serve Households whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083. [~~The property assisted must be located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.~~]

(e) The Department will require a first lien position.

(f) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) Refinance [~~refinance~~], acquisition and closing costs: $35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of $90 per square foot of conditioned space or $100,000, or for Households of five or more Persons the lesser of $90 per square foot of conditioned space or $110,000 for a four-bedroom unit.[~~;~~]

(3) Replacement [~~replacement~~] with an energy efficient MHU: $75,000; and

(4) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed $10,000 may be used to pay for any of the following:

(1) Necessary [~~necessary~~] environmental mitigation as identified during the Environmental review process;

(2) Installation [~~installation~~] of an aerobic septic system; or

(3) Homeowner [~~homeowner~~] requests for accessibility features.

(h) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition [~~acquisition~~] and closing costs: no more than $1,500 per housing unit;

(2) Reconstruction or New Construction: no more than $10,000 per housing unit;

(3) Replacement [~~replacement~~] with an MHU: no more than $3,500 per housing unit;

(4) Rehabilitation that is not Reconstruction: $7,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than four [4] percent of the Direct Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 [~~fifteen (15)~~] years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this chapter [~~Chapter~~] must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include [~~include~~] the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain [~~contain~~] no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each [~~each~~] bedroom must be no less than 100 square feet; have a length or width no less than eight [~~8~~] feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two [~~2~~] feet deep and three [~~3~~] feet wide and high enough to contain at least five [~~5~~] feet of hanging space; and

(4) Be [~~be~~] no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

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 November 12, 2018.

TRD-201804855
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-0908

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS
SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.49

The Public Utility Commission of Texas (commission) proposes amendments to §24.49, relating to application for a rate adjustment by a Class C utility pursuant to Texas Water Code §13.1872. The proposed amendments in §24.49(d) will address formatting and stylistic changes to the rule to match the rest of the rules in the subchapter. The proposed amendments to §24.49(f)(2) will revise the timelines for when an application may be submitted to the commission for a Class C utility rate adjustment. The proposed amendments to §24.49(g) will change the price index to the *Consumer Price Index for All Urban Consumers,* will remove the numbering for subsection (g)(1) to combine the language with subsection §24.49(g), and will repeal §24.49(g)(2) and (3) because they related to the first year of implementation and are no longer applicable. Project number 47309 is assigned to this proceeding.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule, as amended, is in effect, the following statements will apply:

(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 not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not positively or adversely affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Ms. Tammy Benter, Director, Water Utility Regulation Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Tammy Benter, Director, Water Utility Regulation Division, has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be to allow a Class C water and sewer utility to increase rates in the amount determined by the new index, which is more closely associated with changing costs in the water and sewer industry than the old index, and that there will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on December 18, 2018. The request for a public hearing must be received within 30 days after publication.

Public Comments

Comments on the proposed amendment may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed by 16 Texas Administrative Code §22.71(c). Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 47309.

Statutory Authority

These amendments are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (West 2016 and Supp. 2017) and Texas Water Code §13.041(b) (West 2015), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Texas Water Code §13.1872 (West 2013), which allows for rate adjustments for Class C utilities.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and Texas Water Code §13.041(b) and §13.1872.

§24.49. Application for a Rate Adjustment by a Class C Utility Pursuant to Texas Water Code §13.1872.

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

(d) Processing of the application. The following criteria apply to the processing of an application.

(1) (No change.)

(2) Within 30 days of the filing of the application, commission staff [~~Staff~~] shall file a recommendation stating whether the application should be deemed administratively complete pursuant to §24.8 of this title. If commission staff [~~Staff~~] recommends that the application [~~should~~] be deemed [~~to be~~] administratively complete, commission staff [~~Staff~~] shall also file a recommendation on final disposition, including, if necessary, a proposed tariff sheet [~~sheets~~]reflecting the requested rate change.

(e) (No change.)

(f) Time between filings. The following criteria apply to the timing of the filing of an application.

(1) A Class C utility may adjust its rates pursuant to this section not more than once each calendar year and not more than four times between rate proceedings described by TWC §13.1871.

(2) The [~~Effective January 1, 2016, the~~] filing of applications pursuant to this section is limited to a specific quarter of the calendar year, and is [~~month~~] based on the last two digits of a utility's certificate of convenience and necessity (CCN) number as outlined below, unless good cause is shown for filing in a different quarter [~~month~~]. For a utility holding multiple CCNs, the utility may file an application in any quarter [~~month~~] for which any of its CCN numbers is eligible.

(A) Quarter 1 (January-March): CCNs ending in 00 through 27;

(B) Quarter 2 (April-June): CCNs ending in 28 through 54;

(C) Quarter 3 (July-September): CCNs ending in 55 through 81; and

(D) Quarter 4 (October-December): CCNs ending in 82 through 99.

[~~(A) January: CCNs ending in 00 through 09;~~]

[~~(B) February: CCNs ending in 10 through 18;~~]

[~~(C) March: CCNs ending in 19 through 27;~~]

[~~(D) April: CCNs ending in 28 through 36;~~]

[~~(E) May: CCNs ending in 37 through 45.~~]

[~~(F) June: CCNs ending in 46 through 54;~~]

[~~(G) July: CCNs ending in 55 through 63;~~]

[~~(H) August: CCNs ending in 64 through 72;~~]

[~~(I) September: CCNs ending in 73 through 81;~~]

[~~(J) October: CCNs ending in 82 through 90; and~~]

[~~(K) November: CCNs ending in 91 through 99.~~]

(g) Establishing the price index. The commission shall, on or before December 1 of each year, establish a price index as required by TWC §13.1872(b) based on the following criteria. The price index will be established in an informal project to be initiated by commission staff.

[~~(1)~~] The price index shall be equal to the water and sewerage maintenance expenditure category of the *Consumer Price Index for All Urban Consumers* [~~Gross Domestic Implicit Price Deflator index published by the Bureau of Economic Analysis of the United States Department of Commerce~~] for the prior 12 months ending on September 30, unless the commission finds that good cause exists to establish a different price index for that year.

[~~(2) For calendar year 2015, until the commission adopts its first order establishing a price index pursuant to this subsection, applications for an annual rate adjustment will use a price index percentage difference of 1.57%. The percentage difference of 1.57% is calculated using indices set in paragraph (3) of this subsection.~~]

[~~(3) For the purpose of implementing this section, the initial indices are equal to:~~]

[~~(A) 106.923 for 2014; and~~]

[~~(B) 108.603 for 2015.~~]

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 November 8, 2018.

TRD-201804832
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-7244

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CONTINUING EDUCATION

22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.1 (Continuing Education). The purpose of repealing this section is to remove it and then replace it at the same time with an updated new rule regarding continuing education.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined for each year of the first five years that the proposed repeal will be in effect, the public benefit is

to update and streamline the Board's rules regarding continuing education requirements for chiropractors without lessening the Board's ability to protect the public.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §73.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not increase or decrease fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.*

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

The proposed repeal does not affect any other statutes or rules.

§73.1. Continuing Education.

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 November 8, 2018.

TRD-201804835
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 305-6700

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22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes new §73.1, Continuing Education, to replace the existing §73.1 to update and streamline the Board's continuing education requirements for chiropractors. Accordingly, current §73.1 is being repealed elsewhere in this issue of the *Texas Register.*

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Fortner has determined that for the first five-year period the proposed rule is in effect, the expected public benefit will be clarity and guidance for the public and stakeholders regarding the Board's continuing education requirements.

Mr. Fortner has also determined that the proposed new rule will not have an adverse economic effect on small businesses, rural communities or individuals because it does not impose any duties or obligations upon small businesses, rural communities or individuals.

GOVERNMENT GROWTH IMPACT: Mr. Fortner has determined that the proposed rule does not have a government growth impact pursuant to Texas Government Code, §2001.0221.

Comments on the proposed new rule or to a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, via email rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code §2001.

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

§73.1. Continuing Education.

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Definitions:

(1) Live format--any educational course that is not pre-recorded and is presented in real time through an interactive medium such as a live webinar or at an in-person training event.

(2) Online course--any pre-recorded or live format educational course that is delivered through an internet-based platform. All online courses shall have the means to verify attendance through testing on the material presented or other approved format.

(c) Requirements.

(1) Every licensee shall complete 16 hours of continuing education each year unless a licensee is exempted under subsection (e) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed through any course or seminar elected by the licensee that has been approved by the Board.

(A) A licensee must attend any course designated as a "TBCE Required Course" in a live format, and the course may be counted as part of the 16 hour requirement. A minimum of four of the 16 annual required hours of continuing education shall include topics designated by the Board.

(i) A minimum of three hours of the total required continuing education shall consist of a course specifically related to the Board's rules including the Board's code of ethics, recordkeeping, documentation, and coding.

(ii) A minimum of one hour of the total required continuing education shall relate to risk management in chiropractic practice. Risk management means the identification, investigation, and evaluation of risks and methods to correct and eliminate those risks.

(iv) This may be taken online through a course offered by the Board or in any live format course approved by the Board. An instructor for this continuing education must meet one of the following criteria:

(I) hold a doctorate degree and hold an active license to practice chiropractic or law;

(II) is part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education;

(III) is some other qualified health care provider; or

(IV) is an individual with substantial knowledge, skill, and ability in chiropractic practice.

(v) Licensees who were initially licensed on or after September 1, 2012, must complete at least eight hours of continuing education in coding and documentation for Medicare claims no later than their second renewal period unless they are exempted under subsection (e) of this section. The eight hours in coding and documentation for Medicare claims may be counted as part of the total 16 continuing education hours required during the year in which the eight hours were completed.

(iv) The Board may issue public memoranda on urgent public health issues. The Board will publish these on the Board's website and distribute them to the major continuing education providers.

(B) A licensee who serves as an examiner for the National Board of Chiropractic Examiners' Part IV Examination may receive credit for this activity, not to exceed eight hours each year.

(C) A licensee is only allowed to take up to ten hours of online courses that are not live format.

(3) A list of approved courses, including "TBCE Required Courses", will be available on the Board's website. The Board will also post notice of TBCE courses in its newsletter.

(4) A licensee who is unable to travel to attend a continuing education course due to an illness or disability may satisfy the Board's requirements by completing 16 hours of approved courses online. If a licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their requirements.

(d) Verification.

(1) At the Board's request, a licensee shall submit written verification from each sponsor of the licensee's completion of each continuing education course hour used to fulfill the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (c) of this section.

(e) Exemption. The following are exempt from the requirements of subsection (c) of this section:

(1) a licensee who holds an inactive license. If an individual wishes to resume the practice of chiropractic during the reporting year for which this exemption applies, the individual cannot begin to practice until first obtaining all required continuing education hours;

(2) a licensee who is a military member, veteran, or military spouse during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the Board that the licensee suffered an illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in their first renewal period.

(f) A military member who holds a license is entitled to two years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military member's license.

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 November 8, 2018.

TRD-201804836
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 305-6700

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

22 TAC §186.10

The Texas Medical Board (Board) proposes amendments to §186.10, concerning Continuing Education Requirements.

The amendment to §186.10 clarifies when continuing education (CE) credit is granted to Respiratory Care Practitioners for completion of an academic semester unit or hour. Previously, the rule did not specify what kind of coursework qualified for this continuing education credit. The amendment makes clear that the academic semester unit or hour must be part of the curriculum of a respiratory care education program or a similar education program in another health-care related field offered by an accredited institution. Additionally, the amendment specifies that the 15 contact hour credit will be granted in non-traditional CE.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years this section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify CE credit and ensure that credit is given for coursework relating to the practice of respiratory care.

Mr. Freshour has also determined that for the first five-year period these sections as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the sections as proposed.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments and determined that for each year of the first five years the proposed amendments will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is *none;*

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is *none;*

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is *none;* and

(4) there are *no* foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

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

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rules do not require an increase or decrease in fees paid to the agency.

(5) The proposed rules do not create new regulations.

(6) The proposed rules do not expand existing regulations. The proposed rules do limit existing regulations, as described above.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

(8) The proposed rules do not positively or adversely affect this state's economy.

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated §604.052, which provides authority for the Board to recommend rules necessary to administer and enforce Chapter 604 of the Texas Occupations Code. The amendments are also proposed under the authority of the Texas Occupations Code Annotated §604.154, which provides authority for the Board to establish continuing education requirements.

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

§186.10. Continuing Education Requirements.

(a) General. Each respiratory care practitioner is required to complete 24 contact hours of approved continuing education (CE) every two (2) years as a condition of renewal of a certificate. At least 12 contact hours must be in traditional courses. The remainder of contact hours may be in non-traditional courses or from passage of examinations detailed in subsection (b)(3) of this section. At least 2 contact hours must be in ethics. These ethics hours may be completed via traditional courses or non-traditional courses.

(1) A contact hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(2) A retired respiratory care practitioner providing only voluntary charity care who is approved by the advisory board for renewal may complete reduced CE requirements equal to half of the number of CE hours required for renewal for a certified respiratory care practitioner.

(3) Notwithstanding paragraph (1) of this subsection, completion of one academic semester unit or hour that is a part of the curriculum of a respiratory care education program or a similar education program in another health-care related field offered by an accredited institution shall be credited 15 contact hours of non-traditional CE.

(4) No CE hours may be carried over from one renewal period to another renewal period.

(b) Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

(1) Traditional CE. Provider-directed educational activities directly related to the profession of respiratory care that require the learner and provider to interact in real time, including, but not limited to, live lectures, courses, seminars, workshops, review sessions, or distance learning activities such as webcasts, videoconferences, and audio conferences in which the learner can interact with the provider. Traditional CE must be approved, recognized, accepted, or assigned CE credit by a professional organization or association (such as TSRC,

NBRC or AARC) or offered by a federal, state, or local government entity.

(2) Non-traditional CE.

(A) Self-directed study directly related to the profession of respiratory care that does not include interaction between the learner and the instructor. A test at the conclusion of the self-directed study is required. Non-traditional CE must be approved, recognized, accepted, or assigned CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(B) A respiratory care practitioner who teaches or instructs a CE course shall be credited one (1) contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once for teaching a particular course.

(C) A respiratory care practitioner who teaches or instructs a course in a respiratory care educational program accredited by the Commission on Accreditation for Respiratory Care or other accrediting body approved by the board shall be credited one (1) contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once per renewal period for teaching a particular course.

(3) Passage of an official credentialing or proctored self-evaluation examination, as follows:

(A) NBRC Therapist Multiple Choice (TMC) credentialing or re-credentialing examination - 10 contact hours;

(B) NBRC Clinical Simulation Examination (credentialing or re-credentialing) - 10 contact hours;

(C) NBRC Neonatal/Pediatric Respiratory Care Specialist (NPS) examination (credentialing or re-credentialing) - 10 contact hours;

(D) NBRC Adult Critical Care Specialist (ACCS) examination (credentialing or re-credentialing) - 10 contact hours;

(E) NBRC Sleep Disorder Specialist (SDS) examination (credentialing or re-credentialing) - 10 contact hours;

(F) NBRC Certified Pulmonary Function Technologist (CPFT) examination or NBRC Registered Pulmonary Function Technologist (RPFT) examination (credentialing or re-credentialing) - 10 contact hours;

(G) Board of Registered Polysomnographic Technologists (BRPT) registration examination (credentialing or re-credentialing) - 10 contact hours;

(H) National Asthma Educator Certification Board (NAECB) Certified Asthma Educator (AE-C) examination (credentialing or re-credentialing) - 10 contact hours;

(I) Advanced cardiac life-support (ACLS), pediatric advanced life-support (PALS), neonatal advanced life-support (NALS) or neonatal resuscitation program (NRP), basic trauma life-support, or pre-hospital trauma life-support (credentialing or re-credentialing) - 8 contact hours;

(J) Examinations listed in subparagraphs (A) - (I) of this paragraph may be counted only once for credit. If an initial credentialing examination is counted towards fulfillment of CE requirements, the same examination taken later for re-credentialing purposes may only be applied towards fulfillment of CE requirements once every three (3) renewal periods.

(c) Verification of continuing education. The advisory board may conduct random audits of CE reported to be completed by respiratory care practitioners to determine compliance with this section. The advisory board may require written verification of CE hours from a respiratory care practitioner within 30 days of request. Failure to provide such verification may result in disciplinary action by the advisory board.

(d) Exemptions.

(1) A respiratory care practitioner may request in writing an exemption from the CE requirement for the following reasons:

(A) documented catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) residence of longer than one year's duration outside the United States; or

(D) good cause shown on written application of the respiratory care practitioner that gives satisfactory evidence to the advisory board that he or she is unable to comply with the CE requirement.

(2) Exemptions are subject to the approval of the Executive Director of the Medical Board and must be requested in writing at least 30 days prior to the expiration date of the certificate.

(3) An approved exemption may not exceed one renewal period but may be requested biennially, subject to the approval of the Executive Director of the Medical Board.

(e) CE hours that are obtained to comply with the CE requirements for the preceding renewal period as a prerequisite for obtaining the renewal of a certificate shall first be credited to meet the CE requirements for the previous renewal period. Once the previous renewal period's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current renewal period.

(f) A false report or statement to the advisory board by a respiratory care practitioner regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §604.201 of the Act. A respiratory care practitioner who is disciplined by the advisory board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the practitioner's certificate.

(g) A respiratory care practitioner who is a military service member may request an extension of time, not to exceed two years, to complete any CE requirements. A request for such extension is subject to the approval of the Executive Director of the Medical Board.

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

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Scott Freshour
General Counsel
Texas Medical Board
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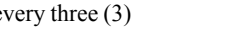

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.12

The Comptroller of Public Accounts proposes new §3.12, concerning hotel projects, project financing zones, and qualified hotel projects. This section implements four statutory provisions that concern tax rebates. This section also establishes the administrative and procedural guidelines for an owner of a qualified hotel project, a municipality, a nonprofit municipally sponsored local government corporation, and a nonprofit corporation acting on behalf of an eligible central municipality, to claim such rebates.

The first provision is Government Code, §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), which requires the comptroller to rebate, refund, or pay to the owner of a qualified hotel project the local ad valorem, local sales and use, local hotel occupancy, and local mixed beverage taxes generated, paid, or collected by the qualified hotel project, or a business at the qualified hotel project, and remitted to the comptroller, when a governmental body has entered into an agreement to rebate, refund, or pay to the owner of a qualified hotel project those local taxes generated from the qualified hotel project.

The second provision is Tax Code, §151.429(h) (Tax Refunds for Enterprise Projects), which requires the comptroller to rebate to the owner of a qualified hotel project the state sales and use and state hotel occupancy taxes paid by the qualified hotel project, or a business located in the qualified hotel project, for a period of ten years.

The third provision is Tax Code, §351.1015(g) (Certain Qualified Projects), which requires the comptroller to pay to a municipality the amount of state sales and use, state hotel occupancy, and state mixed beverage taxes collected in any calendar year from hotels located in a project financing zone that exceeds the amount of those taxes collected the year the municipality designates the zone, excluding the state sales and use and state hotel occupancy taxes collected from a hotel project that exists in the zone on the date the municipality designates the zone.

The fourth provision is Tax Code, §351.102(c) (Pledge for Bonds), which entitles a municipality to receive from a hotel project the funds that the owner of a qualified hotel project receives under Tax Code, §151.429(h), which are state sales and use and state hotel occupancy taxes paid or collected by a hotel or a business at the hotel project. Tax Code, §351.102(c) may also entitle a municipality to receive the funds that the owner of a qualified hotel project receives under Government Code, §2303.5055, which are local ad valorem, local sales and use, local hotel occupancy, and local mixed beverage taxes generated, paid or collected by a hotel or a business at the hotel project that a governmental body has agreed to rebate, refund, or pay.

Subsection (a) applies to hotel projects.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "convention center entertainment-related facilities." Tax Code, §351.102(b) includes the term "convention center entertainment-related facilities" as a facility ancillary to a hotel, but does not define the term therein. The comptroller bases the definition of the term on Tax Code, §351.001(2) (Definitions), Tax Code §351.102(b), and the definition of "entertainment" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/entertainment). Tax Code, §351.001(2) defines "convention center facilities" as "facilities that are primarily used to host convention and meetings." Tax Code, §351.102(b) provides that a convention center facility must be owned by a municipality. Tax Code, §351.102(b) also uses the term "entertainment-related." Oxford Living Dictionaries defines "entertainment" as an event, performance, or activity designed to entertain others. Tax Code §351.102(b) qualifies the term "entertainment-related" by relating it directly to a convention center facility. It follows that "convention center entertainment-related facilities" do not include all facilities designed and used for entertainment, but must be facilities designed and primarily used for conventions and meetings held at the convention center.

The comptroller proposes defining convention center entertainment-related facilities as facilities owned by or located on land owned by the municipality or the nonprofit organization acting on behalf of an eligible central municipality, and designed and primarily used for convention center events, activities, and performances. The definition provides examples of facilities that qualify as convention center entertainment-related facilities as well as examples that do not qualify.

Subparagraph (B) defines the term "convention center facilities." The comptroller bases the definition on Tax Code, §351.001(2). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions.

The comptroller defines the term "eligible central municipality" in subparagraph (C) as that term appears in Tax Code, §351.001(7).

Subparagraph (D) defines the term "eligible tax proceeds." The comptroller bases the definition on Government Code, §2303.5055(e).

Subparagraph (E) defines the term "facility ancillary to the hotel." Tax Code, §351.102(b) uses but does not define the term. Tax Code, §351.102(b), provides that the facilities ancillary to the hotel are part of the hotel project. A hotel project must be owned by or located on land owned by the city or, for an eligible central municipality, by a nonprofit corporation acting on its behalf. Therefore, the facilities ancillary to the hotel must also be owned by or located on land owned by the city or a nonprofit corporation acting on behalf of an eligible central municipality. Tax Code, §351.102(b) further provides that facilities ancillary to the hotel must be located within 1,000 feet of either the hotel or the convention center facility. In addition, the definition provides that the facility "provides necessary support for the operation and function of the hotel." The comptroller bases this requirement on the uses of the term "ancillary" in the Tax Code, the definition of "ancillary" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/us/ancillary), and the decision in *Putman v. City of Irving,* 331 S.W.3d 869 (Tex. App.-Dallas 2011, pet. denied). The Tax Code references "ancillary" in various sections, such as, Tax Code, §151.0047(b)(2) (Real Property Repair and Remodeling) {"{g}roup of manufacturing and processing machines and ancillary equipment that together are necessary to create or produce..."}; Tax Code, §151.318(c)(1)(B) (Property Used in Manufacturing) {"...{p}iping through which the product ... is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that sup-

ports only that single item of manufacturing equipment..."}; and Tax Code, §313.021(2)(C)(iii) {"... '{q}ualified property' means ... tangible personal property... that is first placed in service in the new building ... if the personal property is ancillary and necessary to the business conducted..."}. The *Oxford Living Dictionaries* defines "ancillary" as "providing necessary support to the primary activities or operation of an organization, institution, industry, or system." The decision in *Putnam* states that the facilities do not have to be physically connected to the hotel and the restaurants do not have to derive the majority of their revenue from hotel guests to qualify as "ancillary." *Putnam,* 331 S.W.3d at 876. Finally, the area of a hotel project may encompass existing facilities within 1,000 feet of the hotel or convention center facility. Because existing facilities may be built prior to and independent of the development of a hotel project, the definition excludes existing facilities located within 1,000 feet of the hotel or convention center facility that are not constructed, developed, or remodeled as part of the hotel project.

Subparagraph (F) defines the term "governmental body." The comptroller bases this definition on the interpretation of Government Code, §2303.505 (Local Sales and Use Tax Refunds), which provides for refunds of local taxes under a written agreement with the governing body of a municipality or county.

Subparagraph (G) defines the term "hotel project," which is described in Tax Code, §351.102(b) but not defined therein. The comptroller bases this definition on Tax Code, §351.102(b).

Subparagraph (H) defines the term "open for initial occupancy." The term used in Tax Code, §151.429(h), but not defined, explains when the 10-year rebate period of state sales and state hotel occupancy taxes begins. The comptroller bases the meaning of the term on the definition of a hotel in Tax Code, §156.001 (Definitions) and Tax Code, §351.001(4), the definition of a convention center facility in Tax Code, §351.001(2), and the requirements of a hotel project in Tax Code, §351.102(b). The comptroller proposes that a reasonable interpretation of the phrase is to reference the earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

Subparagraph (I) defines the term "shop." Tax Code, §351.102(b) includes the term "shops" as a facility ancillary to a hotel, but does not define the term therein. The comptroller bases the meaning of the term on the definition of shop in *Merriam-Webster's Dictionary* (https://www.merriam-webster.com/dictionary/shop), which defines "shop" as "a building or room stocked with merchandise for sale: store." The comptroller proposes defining shop as a retail store that exclusively sells tangible personal property.

The comptroller defines the term "tangible personal property" in subparagraph (J), as that term appears in Tax Code, §151.009 (Tangible Personal Property).

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for a hotel project. Subparagraph (A) addresses the requirements that must be satisfied by a municipality described in Tax Code, §351.102(b).

Included is the requirement to submit to the comptroller's Audit Division a waiver of confidentiality release for each business at a hotel project that permits the comptroller to disclose otherwise confidential sales tax and mixed beverage sales tax information to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality. Pursuant to Tax Code, §151.027 (Confidentiality of Tax Information) and §321.3022(d) (Tax Information), the comptroller can only rebate taxes generated by a business at a hotel project to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality when the business has waived its right of confidentiality. The waiver of confidentiality release must be renewed annually, unless the waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a hotel project.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that hotel projects may receive. Subparagraph (A) provides that a municipality to which Tax Code, §351.102(b) applies is entitled under Tax Code, §351.102(c) to receive the funds an owner of a qualified hotel project may receive under Government Code, §2303.5055(a) or Tax Code, §151.429(h). Therefore, the tax rebate period for a hotel project is the same as it is for a qualified hotel project. The comptroller proposes the period for state and local tax rebates be the first 10 years after the hotel project is open for initial occupancy. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h) and §351.102(c). Under Government Code, §2303.5055(a), upon agreement with a governmental body, the owner of a qualified hotel project may receive a rebate of eligible tax proceeds "for a period that may not exceed 10 years." Under Tax Code, §151.429(h), the owner of a qualified hotel project is entitled to receive a refund, rebate, or payment of 100% of the state sales and use tax and state hotel occupancy tax paid or collected by a hotel or a business located in the qualified hotel project, "during the first 10 years after such qualified hotel project is open for initial occupancy." Although the language to describe the 10-year period in which state taxes and local taxes are rebated differs, to maintain consistency among provisions of Government Code, §2303.5055(a) and Tax Code, §151.429(h) and §351.102(c), the comptroller proposes the tax rebate period to mean "during the first 10 years after such hotel project is open for initial occupancy." The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

Subparagraph (B) explains that rebates under Government Code, §2303.5055 apply to a hotel project when there is an agreement with a governmental body as required in Government Code, §2303.5055(a).

Paragraph (4) addresses the situation in which a municipality designates multiple hotel projects. Subparagraph (A) explains that a municipality may designate more than one hotel project. Subparagraph (B) provides that, after a facility ancillary to a hotel has entered into an agreement with a hotel project, the facility cannot associate with another hotel project to extend the 10-year tax rebate period. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h).

Subsection (b) applies to project financing zones.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "base year amount." The comptroller bases the definition on Tax Code, §351.1015(a)(1).

Subparagraph (B) defines the term "commenced," which is used in Tax Code, §351.1015(g), but not defined therein. The comptroller bases the definition of "commence" as it appears in the *Merriam-Webster Dictionary* (https://www.merriam-webster.com/dictionary/commence), which defines the term as "to have or make a beginning; start." The comptroller proposes that a qualified project begins with the execution of a contract to acquire, lease, construct, improve, or equip the qualified project.

Subparagraph (C) defines the term "convention center facility." The comptroller bases the definition on Tax Code, §351.001(2) (Definitions). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions.

Subparagraph (D) defines the term "date of designation," which is not defined by statute but is necessary to implement certain statutory provisions. Tax Code, §351.1015(f) requires the municipality to notify the comptroller of the municipality's designation of a project financing zone not later than the 30th day after the date the municipality designates the zone. Tax Code, §351.1015(f) further provides the municipality is entitled to receive the incremental hotel-associated revenue from the project financing zone beginning the first day of the year after the year the municipality designates the zone and ending the last day of the month during which the designation expires. Pursuant to Tax Code, §351.1015(a)(4), that expiration date is not later than the 30th anniversary of the date of the designation. The comptroller proposes the date of designation of a project financing zone as the date the municipality by ordinance or agreement designates a project financing zone.

Subparagraph (E) defines the term "hotel-associated revenue." The comptroller bases the definition on Tax Code, §351.1015(a)(2).

Subparagraph (F) defines the term "incremental hotel-associated revenue." The comptroller bases the definition on Tax Code, §351.1015(a)(3). Pursuant to Tax Code, §351.1015(g), the comptroller deposits incremental hotel-associated revenue into a suspense account for the municipality. The amount of incremental hotel-associated revenue the comptroller deposits is the amount of hotel-associated revenue collected from hotels located in the project financing zone in any calendar year, minus the base year amount that was collected from hotels located in the project financing zone in the year of the zone's date of designation. Tax Code, §351.1015(a)(2)(A) excludes from hotel-associated revenue the revenue received under Tax Code, §351.102(c) for a hotel project that is located in the zone and that exists when the municipality designates the zone. To be consistent with provisions of Tax Code, §351.1015(a)(1), (2), and (3), the comptroller proposes that, after the 10-year state tax rebate period ends for a hotel project that was located in the zone and that existed when the zone was designated, the hotel-associated revenue received from the hotel located in the hotel project will be included in the calculation of incremental hotel-associated revenue, but not included in the base year amount.

The comptroller defines the term "project financing zone" in subparagraph (G) as it appears in Tax Code, §351.1015(a)(4).

The comptroller defines the term "qualified project" in subparagraph (H) as that term appears in Tax Code, §351.1015(a)(5).

The comptroller defines "related infrastructure" and "venue" in subparagraph (I) and subparagraph (J), as those terms appear in Local Government Code, Chapter 334.001(3) and (4) (Sports and Community Venues).

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for qualified projects located in project financing zones. Subparagraph (A) addresses requirements a municipality must satisfy in order to initiate a request for tax rebates for qualified projects located in project financing zones. Included in the information the municipality must submit to the comptroller's Audit Division is a waiver of confidentiality release for each business at a hotel when there are fewer than four businesses reporting sales tax or mixed beverage sales tax within a project financing zone, required by Tax Code, §151.027 and Tax Code, §321.3022(d). The waiver of confidentiality release must be renewed annually, unless the waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) addresses when a municipality designates one project financing zone that includes multiple qualified projects, and how the comptroller considers the boundaries of the zone. The hotel-associated revenue collected or received from all hotels located in the project financing zone will be included in the zone's incremental hotel-associated revenue, and payments to the municipality will begin when the municipality notifies the comptroller the first qualified project has commenced.

Subparagraph (C) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a qualified project in a project financing zone.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that qualified projects in a project financing zone may receive. Subparagraph (A) identifies which municipalities may designate a project financing zone and pledge incremental hotel-associated revenue received from hotels located in the project financing zone for the payment of bonds and other obligations to acquire, lease, construct, improve, enlarge, and equip a qualified project.

Subparagraph (B) explains that the municipality must notify the comptroller not later than 30 days after designating a project financing zone. The subparagraph further establishes that the boundaries of a project financing zone must be within a three-mile radius of the center of a qualified project and within the corporate limits of the municipality. The project financing zone's designation must include the longitude and latitude of the center of the qualified project.

Subparagraph (C) explains that the municipality is entitled to receive incremental hotel-associated revenue from hotels located within the project financing zone beginning the first day of the year after the year the municipality designated the project financing zone. Payments of incremental hotel-associated revenue end on the last day of the month in which the designation expires, which cannot be later than 30 years from the anniversary month the municipality designated the project financing zone.

Subparagraph (D) explains that the comptroller will deposit incremental hotel-associated revenue into a separate suspense account outside the state treasury beginning the first day of the year after the year the municipality designated the project financing zone, and begins to make payments of the revenue on the date

the qualified project has commenced. If the qualified project has not commenced by the fifth anniversary, the comptroller must stop making deposits and transfer the money in the account to the state's general revenue fund. Tax Code, §351.1015(h) authorizes the comptroller to estimate the amount of incremental hotel-associated revenue that will be deposited to a suspense account. A municipality can request disbursements from the account on a monthly basis based on the estimate. "Estimated incremental hotel-associated revenue" is the difference between the revenue from the previous year and the base year amount, except the first year's estimated incremental hotel-associated revenue is the base year amount, less the previous year revenue amount. Each year's estimation will be adjusted at the end of the calendar year pursuant to Tax Code, §351.1015(h). If the qualified project is abandoned, the municipality must notify the comptroller, and the comptroller must transfer to the general revenue fund the amount in the suspense account that exceeds the amount needed for payment of bonds or other obligations of the municipality.

Subsection (c) applies to qualified hotel projects.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "convention center facilities." The comptroller bases the definition on Tax Code, §351.001(2) (Definitions). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions.

Subparagraph (B) defines the term "eligible tax proceeds." The comptroller bases the definition on Government Code, §2303.5055(e).

Subparagraph (C) defines the term "facility ancillary to the hotel." Government Code, §2303.003(8) uses but does not define the term. The comptroller bases the definition on the interpretation of the term in Government Code, §2303.003(8), which provides that a qualified hotel project means a hotel "that is within 1,000 feet of a convention center owned by a municipality with a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel." The definition provides that the facility "provides necessary support for the operation and function of the hotel." The comptroller bases this requirement on the uses of the term "ancillary" in the Tax Code, and the definition of "ancillary" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/us/ancillary). The Tax Code references "ancillary" in various sections, including Tax Code, §151.0047(b)(2) {"{g}roup of manufacturing and processing machines and ancillary equipment that together are necessary to create or produce...."}, Tax Code, §151.318(c)(1)(B) {"...{p}iping through which the product... is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment...."}, and Tax Code, §313.021(2)(C)(iii) {"... '{q}ualified property' means... tangible personal property... that is first placed in service in the new building ... if the personal property is ancillary and necessary to the business conducted...."}. The Oxford Living Dictionaries defines "ancillary" as "providing necessary support to the primary activities or operation of an organization, institution, industry, or system." Finally, the area of a qualified hotel project may encompass existing facilities within 1,000 feet of the convention center facility. Because existing facilities may be built prior to and independent of the development of a qualified hotel project, the definition excludes existing facilities located within 1,000 feet of the convention center facility that are not constructed, developed, or remodeled as part of the qualified hotel project.

Subparagraph (D) defines the term "governmental body." The comptroller bases this definition on the interpretation of Government Code, §2303.505 (Local Sales and Use Tax Refunds), which provides for refunds of local taxes under a written agreement with the governing body of a municipality or county.

Subparagraph (E) defines the term "nonprofit municipally sponsored local government corporation." The comptroller bases this definition on how the term is used in Tax Code, §351.001(2) to define the term "convention center facilities". To maintain consistency with the provisions of the Municipal Hotel Occupancy Tax law (Tax Code, Chapter 351) and the Enterprise Zone Act (Government Code, Chapter 2303), this definition also applies to the term "municipally sponsored local government corporation" used in Government Code, §2303.5055(b).

Subparagraph (F) defines the term "open for initial occupancy." The term is used in Tax Code, §151.429(h) to explain when the 10-year rebate period of state sales and state hotel occupancy taxes begins, but is not defined. The comptroller bases the meaning of the term on the definition of a hotel in Tax Code, §156.001 and Tax Code, §351.001(4), the definition of a convention center facility in Tax Code, §351.001(2), and the requirements for a qualified hotel project in Government Code, §2303.003(8) and §2303.5055(a). The comptroller proposes that a reasonable interpretation of the phrase is to reference the earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

Subparagraph (G) defines the term "qualified hotel project." The comptroller bases the definition on Government Code, §2303.003(8). The definition of a qualified hotel project is limited to a municipality having a population of 1,500,000 or more, which currently is only Houston. Additionally, the comptroller accepts the analysis of Attorney General Opinion No. 95-085, which concluded that the definition of a "qualified hotel project" includes a privately owned hotel selected by the municipality.

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for a qualified hotel project. Subparagraph (A) addresses the requirements that must be satisfied by an owner of a qualified hotel project. Included is the requirement to submit to the comptroller's Audit Division a waiver of confidentiality release for each business at a qualified hotel project that permits the comptroller to disclose otherwise confidential sales tax and mixed beverage sales tax information to the owner of the qualified hotel project. Pursuant to Tax Code, §151.027 and §321.3022(d), the comptroller can only rebate taxes generated by a business at a qualified hotel project to the owner of a qualified hotel project when the business has waived its right of confidentiality. The waiver of confidentiality release must be renewed annually, unless the waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a qualified hotel project.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that qualified hotel projects may receive. The comptroller proposes the period for tax rebates be the first 10 years after the qualified hotel project is open for initial occupancy. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h). Under Government Code, §2303.5055(a), upon agreement with a governmental body, the owner of a qualified hotel project may receive a rebate of eligible tax proceeds "for a period that may not exceed 10 years." Under Tax Code, §151.429(h), the owner of a qualified hotel project is entitled to receive a refund, rebate, or payment of 100% of the state sales and use tax and state hotel occupancy tax paid or collected by a hotel or a business located in the qualified hotel project, "during the first 10 years after such qualified hotel project is open for initial occupancy." Although the language to describe the 10-year period in which state taxes and local taxes are rebated differs, to maintain consistency among provisions of Government Code, §2303.5055(a) and Tax Code, §151.429(h), the comptroller proposes the tax rebate period to mean "during the first 10 years after such qualified hotel project is open for initial occupancy."

Subparagraph (A) explains the qualifications for rebates of state tax revenue under Tax Code, §151.429(h) and local tax revenue under Government Code, §2303.5055(a), and that the rebate period is for the first 10 years after the qualified hotel project is open for initial occupancy.

Subparagraph (B) explains that rebates under Government Code, §2303.5055 apply to a qualified hotel project when there is an agreement with a governmental body as required in Government Code, §2303.5055(a).

Subparagraph (C) addresses the situation in which a municipality designates multiple qualified hotel projects. The subsection explains that a municipality may designate more than one qualified hotel project. Based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h), after a facility ancillary to a hotel has entered into an agreement with a qualified hotel project, the ancillary facility cannot associate with another qualified hotel project to extend the 10-year tax rebate period.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal creates a new rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by more clearly defining terms and establishing administrative and procedural guidelines relating to hotel project, project financing zones, and qualified hotel tax rebates. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, and other charges that the comptroller administers under other law.

The new section implements Government Code, §2303.003(8) (Definitions) and §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), and Tax Code, §§151.429 (Tax Refunds for Enterprise Projects), 156.051 (Tax Imposed), 183.021 (Mixed Beverage Tax Clearance Fund), 351.001 (Definitions), 351.1015 (Certain Qualified Projects), and 351.102 (Pledge for Bonds).

§3.12. Hotel Projects, Project Financing Zones, and Qualified Hotel Projects.

(a) Hotel Projects.

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

(A) Convention center entertainment-related facilities--Facilities owned by or located on land owned by the municipality or the nonprofit corporation acting on behalf of an eligible central municipality, and designed and primarily used for convention center events, activities, and performances. Examples of this term are a performance hall, permanent or temporary stage, amphitheater, and pavilion. The term does not include facilities designed for a specific use. Examples of facilities that do not meet this definition include an amusement park, fitness or sports center, museum, sports venue, waterpark, or zoo.

(B) Convention center facilities--Facilities primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality.

(i) The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities.

(ii) The term also means:

(I) a hotel owned by or located on land that is owned by an eligible central municipality or by a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality; or

(II) a hotel that is owned in part by an eligible central municipality described by subparagraph (C)(iv) of this paragraph and that is located within 1,000 feet of a convention center facility.

(C) Eligible central municipality--

(i) A municipality with a population of more than 140,000 but less than 1.5 million that is located in a county with a population of one million or more and that has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(ii) a municipality with a population of 250,000 or more that:

(I) is located wholly or partly on a barrier island that borders the Gulf of Mexico;

(II) is located in a county with a population of 300,000 or more; and

(III) has adopted a capital improvement plan to expand an existing convention center facility;

(iii) a municipality with a population of 116,000 or more that:

(I) is located in two counties both of which have a population of 660,000 or more; and

(II) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(iv) a municipality with a population of less than 50,000 that contains a general academic teaching institution that is not a component institution of a university system, as those terms are defined by Education Code, §61.003 (Definitions); or

(v) a municipality with a population of 640,000 or more that:

(I) is located on an international border; and

(II) has adopted a capital improvement plan for the construction or expansion of a convention center facility.

(D) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a qualified hotel project or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental body.

(E) Facility ancillary to the hotel--A facility owned by or located on land owned by a municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf that provides necessary support for the operation and function of the hotel, and that is:

(i) located within 1,000 feet of a convention center facility owned by the municipality or hotel, as measured from the closest exterior wall of the ancillary facility in a single-tenant building or closest demising wall of the ancillary facility in a multi-tenant building to the closest exterior wall of the convention center facility or hotel; and

(ii) located in a hotel project owned by or located on land owned by:

(I) an eligible central municipality or a nonprofit organization acting on behalf of an eligible central municipality;

(II) a municipality with a population of 173,000 or more that is located within two or more counties;

(III) a municipality with a population of 96,000 or more that is located in a county that borders Lake Palestine;

(IV) a municipality with a population of 96,000 or more that contains the headwaters of the San Gabriel River; or

(V) a municipality with a population of at least 99,900 but not more than 111,000 that is located in a county with a population of at least 135,000.

(iii) The term includes convention center entertainment-related facilities, meeting spaces, restaurants, shops, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities. The term does not include existing facilities located within 1,000 feet of the hotel or convention center facility that were not constructed, developed, or remodeled as part of the hotel project.

(F) Governmental body--A local governmental body with the authority to impose taxes.

(G) Hotel Project--A hotel that is owned by or located on land owned by a municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf, and located within 1,000 feet of a convention center facility owned by the municipality, as measured by the closest exterior wall of the hotel and the closest exterior wall of the convention center facility. The term includes a facility ancillary to the hotel as defined in subparagraph (D) of this paragraph.

(H) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(I) Shop--A retail store that exclusively sells tangible personal property.

(J) Tangible personal property--Personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, and includes a computer program and a telephone prepaid calling card.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a hotel project.

(A) A municipality identified in paragraph (1)(D)(ii) of this subsection seeking a refund from the comptroller of state sales and use taxes, state hotel occupancy taxes, and eligible tax proceeds must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the certificate of formation for the nonprofit corporation acting on behalf of an eligible central municipality;

(ii) a copy of the municipality's capital improvement plan;

(iii) a copy of the municipality's ordinance approving the rebate agreement between the municipality or nonprofit corporation acting on behalf of an eligible central municipality, and the hotel project;

(iv) a copy of the architect's plan for the hotel project;

(v) a map that shows the required distances between the hotel project, including facilities ancillary to the hotel, and the convention center facility;

(vi) records from the hotel, convention center, and municipality, such as guest folios and press releases, which show the date when the project was open for initial occupancy;

(vii) the name and address of the hotel and the comptroller-issued taxpayer identification and location numbers that the hotel is using, or will use, to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(viii) the name and comptroller-issued taxpayer identification and location numbers of each facility ancillary to the hotel;

(ix) waiver of confidentiality releases signed by the authorized officer or director of the hotel and each facility ancillary to the hotel allowing the comptroller to release the facility's sales and use tax and mixed beverage sales tax information to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality. A waiver of confidentiality release must be renewed annually, unless it specifically states that it is in effect for three years. The comptroller will not approve a period longer than three years;

(x) the name and telephone numbers of the contact person for the municipality or the nonprofit corporation acting on behalf of an eligible central municipality; and

(xi) a completed direct deposit authorization form from the municipality or the nonprofit corporation acting on behalf of an eligible central municipality.

(B) The comptroller will give the requestor written notice of the results of the request for rebate, refund, or payment of taxes for a hotel project.

(3) Tax rebates for hotel projects.

(A) A municipality described in paragraph (1)(D)(ii) of this subsection is entitled to receive from a hotel project 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the hotel project, and eligible tax proceeds, during the first 10 years after the hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

(B) Pursuant to Government Code, §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), the comptroller can only rebate eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds directly to the municipality.

(4) Multiple hotel projects.

(A) A municipality described in paragraph (1)(D)(ii) of this subsection may designate more than one hotel project.

(B) After a facility ancillary to the hotel has entered into a tax rebate agreement with a hotel project, the facility cannot associate with another hotel project to extend the 10-year tax rebate period in paragraph (2)(A) of this subsection.

(b) Project financing zones.

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

(A) Base year amount--The amount of hotel-associated revenue collected in a project financing zone during the calendar year that includes the zone's date of designation.

(B) Commenced--The date a contract to acquire, lease, construct, improve, enlarge, or equip a qualified project is executed.

(C) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. The term includes:

(i) parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities; and

(ii) a hotel owned by or located on land owned by an eligible central municipality or a nonprofit organization acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality.

(D) Date of designation--The date a municipality by ordinance or agreement under Local Government Code, Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development) designates a project financing zone.

(E) Hotel-associated revenue--The amount of tax revenue that is the sum of the following:

(i) state sales and use taxes and state hotel occupancy taxes collected from all hotels located in a project financing zone, excluding the state tax revenue received from a qualified hotel project that exists on the zone's date of designation; and

(ii) the mixed beverage gross receipts tax and mixed beverage sales tax revenue collected from all mixed beverage permittees at hotels located in the project financing zone, excluding the local mixed beverage taxes disbursed to the municipality under Tax Code, §183.051 (Mixed Beverage Tax Clearance Fund).

(F) Incremental hotel-associated revenue--The amount of hotel-associated revenue received in any calendar year from hotels located within a project financing zone, including hotel-associated revenue from hotels built in the project financing zone after the year in which a municipality designates the zone, that exceeds the base year amount. The hotel-associated revenue received from a hotel located in a hotel project that existed on the zone's date of designation after the hotel project's 10-year state tax rebate period expires is included in incremental hotel-associated revenue, but not included in the base year amount.

(G) Project financing zone--An area within a municipality:

(i) that the municipality by ordinance or by agreement under Local Government Code, Chapter 380, designates as a project financing zone;

(ii) the boundaries of which are within a three-mile radius of the center of a qualified project;

(iii) the designation of which specifies the longitude and latitude of the center of the qualified project; and

(iv) the designation of which expires not later than the 30th anniversary of the date of designation.

(H) Qualified project--

(i) A convention center facility; or

(ii) a multipurpose arena or venue that includes a livestock facility and is located within or adjacent to a recognized cultural district, and any related infrastructure, that is:

(I) located on land owned by a municipality or by the owner of the venue;

(II) partially financed by private contributions that equal not less than 40% of the project costs; and

(III) related to the promotion of tourism and the convention and hotel industry.

(I) Related infrastructure--The term includes any store, restaurant, on-site hotel, concession, automobile parking facility, area transportation facility, road, street, water or sewer facility, park, or other on-site or off-site improvement that relates to and enhances the use, value, or appeal of a venue, including areas adjacent to the venue,

and any other expenditure reasonably necessary to construct, improve, renovate, or expand a venue, including an expenditure for environmental remediation.

(J) Venue--

(i) an arena, coliseum, stadium, or other type of area or facility:

(I) that is used or is planned for use for one or more professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events; and

(II) for which a fee for admission to the events is charged or is planned to be charged;

(ii) a convention center, convention center facility, or related improvement, such as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoological park, museum, aquarium, or plaza, located in the vicinity of a convention center or convention center facility owned by a municipality or a county;

(iii) a tourist development area along an inland waterway;

(iv) a municipal parks and recreation system, or improvements or additions to a parks and recreation system, or an area or facility that is part of a municipal parks and recreation system;

(v) a project authorized by Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as that Act existed on September 1, 1997; and

(vi) a watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a qualified project located in a project financing zone.

(A) The municipality must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the approval from the municipality of the project financing zone's designation;

(ii) documentation showing that the qualified project has commenced;

(iii) a map that shows the boundaries of the project financing zone and identifies all active hotels located within those boundaries;

(iv) the name and address of each hotel located within the project financing zone along with the comptroller-issued taxpayer identification and location numbers that each hotel is using to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(v) the names and comptroller-issued taxpayer identification and location numbers for all shops, parking facilities, and other facilities that are located in hotels within a project financing zone;

(vi) when there are fewer than four taxpayers with active sales and use tax permits or mixed beverage permits operating within a project financing zone, a waiver of confidentiality release signed by the authorized officer or director from each sales and use tax permittee and mixed beverage tax permittee located at a hotel in the project financing zone allowing the comptroller to release the sales and use tax and mixed beverage sales tax information to the municipality. A waiver of confidentiality release must be renewed annually, unless it specifically states that it is in effect for three years. The comptroller will not approve a period longer than three years;

(vii) the name and telephone numbers of the contact person with the municipality; and

(viii) a completed direct deposit authorization form from the municipality.

(B) If a municipality designates one project financing zone in which multiple qualified projects are located, the comptroller will consider the boundaries of the project-financing zone to be a distance of a three-mile radius from the center of each of the qualified projects.

(i) The hotel-associated revenue collected from all hotels located in the project financing zone shall be included in the zone's incremental hotel-associated revenue.

(ii) Payments to the municipality under clause (i) of this subparagraph will begin on the date the municipality notifies the comptroller in writing that the first qualified project has commenced.

(C) The comptroller will give the requestor written notice of the results of the request to initiate rebate, refund, or payment of taxes for a qualified hotel project in a project financing zone.

(3) Tax rebates for qualified projects located in project financing zones.

(A) A municipality with a population of at least 650,000 but less than 750,000, according to the most recent federal decennial census, or a municipality with a population of 1,180,000 or more that is located predominantly in a county that has a total area of less than 1,000 square miles and that has adopted a council-manager form of government, may pledge incremental hotel-associated revenue received from hotels located in a project financing zone for the payment of bonds and obligations issued to acquire, lease, construct, improve, enlarge, and equip a qualified project.

(B) The municipality may designate a project financing zone. The municipality must notify the comptroller of the designation of the project financing zone not later than the 30 days after the date the municipality designates the project financing zone.

(i) The boundaries of a project financing zone must be within a three-mile radius of the center of a qualified project and must be within the corporate limits of the municipality.

(ii) The designation of the project financing zone must include the longitude and latitude of the center of the qualified project.

(C) The municipality is entitled to receive the incremental hotel-associated revenue from hotels located in the project financing zone beginning the first day of the year after the year of the zone's date of designation.

(i) Payments of the incremental hotel-associated revenue end on the last day of the month during which the designation of a project financing zone expires.

(ii) The designation of a project financing zone expires not later than 30 years from the anniversary month in which the zone was designated.

(D) Beginning the first day of the year after the year of the zone's date of designation, the comptroller shall deposit incremental hotel-associated revenue collected or received in a separate suspense account outside the state treasury.

(i) Payments from the suspense account to the municipality begin on the date a qualified project has commenced and the municipality has provided the comptroller with the documentation required under paragraph (2) of this subsection.

(ii) If the qualified project has not commenced by the fifth anniversary of the first deposit to the account, the comptroller shall stop making deposits and transfer the money in the account to the general revenue fund.

(iii) The comptroller may estimate the amount of incremental hotel-associated revenue that will be deposited for the calendar year and deposit that amount to the suspense account. The calculation of the estimated incremental hotel-associated revenue is based on the base year amount, less the previous year revenue amount for year one revenue estimates. The next year's incremental difference is based on the revenue from the previous year and the base year. The municipality may request disbursements on a monthly basis based on the estimate. The comptroller must adjust deposits and disbursements to reflect the amount of revenue actually deposited at the end of each calendar year.

(iv) A municipality must notify the comptroller if a qualified project is abandoned. The comptroller shall transfer to the general revenue fund the amount of money in the suspense account that exceeds the amount needed for payment of bonds or other obligations issued or incurred under subparagraphs (A) and (C) of this paragraph.

(c) Qualified hotel projects.

(1) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicated otherwise.

(A) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities.

(B) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a qualified hotel project, or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental entity.

(C) Facility ancillary to the hotel--A facility located within 1,000 feet of a convention center facility owned by a municipality, as measured from the closest exterior wall of the ancillary facility in a single-tenant building or closest demising wall of the ancillary facility in a multi-tenant building to the closest exterior wall of the convention center facility, that is located in a qualified hotel project, and which provides necessary support for the operation and function of the hotel. The term does not include existing facilities located within 1,000 feet of the convention center facility that were not constructed, developed, or remodeled as part of the qualified hotel project.

(D) Governmental body--A local governmental body with the authority to impose taxes.

(E) Nonprofit municipally sponsored local government corporation--A corporation created under the Texas Transportation Corporation Act, Transportation Code, Chapter 431. This definition also applies to the term "municipally sponsored local government corporation."

(F) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(G) Qualified hotel project--A hotel proposed to be constructed, or are being constructed, by a municipality or nonprofit municipally sponsored local government corporation, including a privately owned or existing hotel selected by a municipality, that is located within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a qualified hotel project.

(A) The owner of a qualified hotel project seeking a refund from the comptroller of state sales and use taxes, state hotel occupancy taxes, and eligible tax proceeds must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the certificate of formation for the nonprofit municipally sponsored local government corporation;

(ii) a copy of the municipality's ordinance approving the rebate agreement between the municipality or nonprofit municipally sponsored local government corporation and the qualified hotel project;

(iii) a copy of the architect's plan for the qualified hotel project;

(iv) a map that shows the required distances between the qualified hotel project, including facilities ancillary to the hotel, and the convention center facility;

(v) records from the hotel, convention center, and municipality, such as guest folios and press releases, which show the date when the qualified hotel project was open for initial occupancy;

(vi) the name and address of the hotel and the comptroller-issued taxpayer identification and location numbers that the hotel is using, or will use, to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(vii) the name and comptroller-issued taxpayer identification and location numbers of each facility ancillary to the hotel;

(viii) waiver of confidentiality releases signed by the authorized officer or director of the hotel and each facility ancillary to the hotel allowing the comptroller to release the facility's sales and use tax and mixed beverage sales tax information to the owner of the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation. A waiver of confidentiality release must be renewed annually, unless it specifically states that it is in effect for three years. The comptroller will not approve a period longer than three years;

(ix) the name and telephone numbers of the contact person for the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation; and

(x) a completed direct deposit authorization form from the owner of the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation.

(B) The comptroller will give the requestor written notice of the results of the request to initiate rebate, refund, or payment of taxes for a qualified hotel project.

(3) Tax rebates for qualified hotel projects.

(A) The owner of a qualified hotel project is entitled to receive 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the qualified hotel project, and eligible tax proceeds, during the first 10 years after the qualified hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy. The comptroller does not have the authority to issue tax rebates until the project is open for initial occupancy.

(B) Pursuant to Government Code, §2303.5055, the comptroller can only rebate eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds to the owner of the qualified hotel project.

(C) Multiple qualified hotel projects.

(i) A municipality described in paragraph (1)(G) of this subsection may designate more than one qualified hotel project.

(ii) After a facility ancillary to the hotel has entered into a tax rebate agreement with a qualified hotel project, the ancillary facility cannot associate with another qualified hotel project to extend the 10-year tax rebate period in subparagraph (A) of this paragraph.

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 November 12, 2018.

TRD-201804847
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. FIRE INSPECTOR AND PLAN EXAMINER

The Texas Commission on Fire Protection (the commission) proposes new Chapter 429, Fire Inspector and Plan Examiner, comprising Subchapter A, Minimum Standards For Fire Inspector Certification: §429.1, Minimum Standards for Fire Inspector Personnel, §429.3, Minimum Standards for Basic Fire Inspector Certification, §429.5, Minimum Standards for Intermediate Fire Inspector Certification, §429.7, Minimum Standards for Advanced Fire Inspector Certification, §429.9, Minimum Standards for Master Fire Inspector Certification, and §429.11, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter B, Minimum Standards For Plan Examiner: §429.201, Minimum Standards for Plan Examiner Personnel, §429.203, Minimum Standards for Plan Examiner I Certification, and §429.205, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed new chapter is to create separate certifications for Fire Inspector and Plan Examiner.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new chapter is in effect, there may be a minimal fiscal impact on local governments that are required to train and certify a limited number of individuals as Plan Examiners. This same activity will result in a minimal positive fiscal impact on state government from collection of the applicable testing and certification fees.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Rutland has determined that there may be a minor positive effect on employment if local jurisdictions choose to employ one or more individuals who hold these credentials.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the proposed new chapter is in effect, the public benefit from the passage is that the commission will now offer two separate certifications; Fire Inspector and Plan Examiner. The proposal will simplify and shorten the process to gain Fire Inspector certification for those individuals who would not be assigned to plan review duties, and allow individuals not assigned to field inspection activities to gain the Plan Examiner certification alone. The changes would be expected to enhance expertise of assigned personnel by providing more focused training in the areas for which assignment is expected. This should, in turn, enhance the overall safety of the affected communities.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

The proposed chapter will require persons assigned to plan review duties after the effective date of the chapter to hold Plan Examiner certification. The proposed chapter does not change the previous requirement for Fire Inspector. Impact on micro or small businesses or rural communities is not anticipated as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the new rule is in effect:

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

(2) the rule will not create new, or eliminate any existing employee positions;

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

(4) the rule may result in a minimal increase in fees paid to the agency, depending upon whether local governments utilize existing resources, or hire/train new personnel.

(5) the rule creates a new regulation, because persons assigned to plan reviews after the effective date of the chapter must hold Plan Examiner certification;

(6) the rule will not expand an existing regulation;

(7) the rule may expand the number of individuals subject to the rule's applicability as fire departments appoint individuals to plan review duties; and

(8) The new rule would not significantly impact the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed rule because §2001.0045(c)(6) exempts those rules that are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENT

Comments regarding the proposed new chapter may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11

STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and §419.032, which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.1. Minimum Standards for Fire Inspector Personnel.

(a) Fire code enforcement is defined as the enforcement of laws, codes, and ordinances of the authority having jurisdiction pertaining to fire prevention.

(b) To qualify for appointment to fire code enforcement duties, individuals must be certified as a Fire Inspector, or meet the requirements in subsections (c) and (d) of this section.

(c) Individuals may be appointed to fire code enforcement duties on a probationary or temporary status if they have successfully passed the commission exam for Fire Inspector, as specified in Chapter 439 of this title (relating to Examinations for Certification).

(d) Individuals appointed to fire code enforcement duties in subsection (c) of this section must be certified as a Fire Inspector within one year of the appointment.

(e) Individuals holding any level of fire inspector certification shall be required to comply with the continuing education requirements in §441.13 of this title (relating to Continuing Education for Fire Inspection Personnel).

(f) Individuals holding a fire inspector certification issued prior to March 1, 2019, are not required to hold a plan examiner certification to perform plan reviews.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

In order to be certified as a Basic Fire Inspector, an individual must:

(1) possess valid documentation as an Inspector I and Inspector II from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements-General); or

(2) complete a commission approved fire inspector training program and successfully pass the commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved training program shall consist of one or any combination of the following:

(A) completion of the commission approved Basic Fire Inspector Curriculum, as specified in the commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Inspector Curriculum as specified in the commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) Fire Prevention Codes and Inspections, three semester hours;

(iii) Building Construction in the Fire Service or Building Codes and Construction, three semester hours; and

(iv) Hazardous Materials I, II, or III, three semester hours (total semester hours, 12); or

(D) documentation of the receipt of Fire Inspector I and Fire Inspector II certificates issued by the State Firemen's and Fire Marshals' Association of Texas that are deemed equivalent to a commission approved Basic Fire Inspector curriculum.

§429.5. Minimum Standards for Intermediate Fire Inspector Certification.

(a) Applicants for Intermediate Fire Inspector Certification must meet the following requirements:

(1) hold as a prerequisite Basic Fire Inspector Certification as defined in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of fire inspector certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.7. Minimum Standards for Advanced Fire Inspector Certification.

(a) Applicants for Advanced Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector Certification as defined in §429.5 of this title (relating to Minimum Standards for Intermediate Fire Inspector Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of fire inspector certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§429.9. Minimum Standards for Master Fire Inspector Certification.

(a) Applicants for Master Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector Certification as defined in §429.7 of this title (relating to Minimum Standards for Advanced Fire Inspector Certification); and

(2) acquire a minimum of 12 years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector Certification.

§429.11. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals who pass the applicable sections of the state examination may be granted IFSAC seal(s) for Inspector I and Inspector II by making application to the commission for the IFSAC seal(s) and paying the associated fees, provided they meet the following provisions:

(1) To receive the IFSAC Inspector I seal, the individual must:

(A) complete the Inspector I section of a commission approved course; and

(B) pass the Inspector I section of a commission examination.

(2) To receive the IFSAC Inspector II seal, the individual must:

(A) complete the Inspector II section of a commission approved course;

(B) document possession of an IFSAC Inspector I seal; and

(C) pass the Inspector II section of a commission examination.

(b) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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 November 8, 2018.

TRD-201804819
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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SUBCHAPTER B. MINIMUM STANDARDS FOR PLAN EXAMINER

37 TAC §§429.201, 429.203, 429.205

The new chapter is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed new chapter implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.201. Minimum Standards for Plan Examiner Personnel.

(a) Plan examiner duties are defined as the review of building or other structure plans for the purpose of determining compliance with adopted fire codes and standards.

(b) To qualify for appointment to plan examiner duties, individuals must be certified as a Plan Examiner, or meet the requirements in subsections (c) and (d) of this section.

(c) Individuals may be appointed to plan examiner duties on a probationary or temporary status if they have successfully passed the commission exam for Plan Examiner, as specified in Chapter 439 of this title (relating to Examinations for Certification).

(d) Individuals appointed to plan examiner duties in subsection (c) of this section must be certified as a Plan Examiner within one year of the appointment.

(e) Individuals holding any level of plan examiner certification shall be required to comply with the continuing education requirements in §441.25 of this title (relating to Continuing Education for Plan Examiner).

(f) Individuals holding a fire inspector certification issued prior to March 1, 2019, are not required to hold a plan examiner certification to perform plan reviews.

§429.203. Minimum Standards for Plan Examiner I Certification.

In order to be certified as a Plan Examiner I, an individual must:

(1) possess valid documentation as a Plan Examiner I from either:

(A) the International Fire Service Accreditation Congress; or

(B) the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service using the 2009 or later edition of the NFPA standard applicable to this discipline and meeting the requirements as specified in §439.1(a)(2) of this title (relating to Requirements-General); or

(2) complete a commission approved Plan Examiner I training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved training program shall consist of one of the following:

(A) completion of the commission approved Plan Examiner I Curriculum, as specified in the commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Plan Examiner I Curriculum as specified in the commission's Certification Curriculum Manual; or

(C) documentation of the receipt of a Plan Examiner I certificate issued by the State Firemen's and Fire Marshals' Association of Texas that is deemed equivalent to a commission approved Plan Examiner I curriculum.

§429.205. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals who pass the state examination may be granted an IFSAC seal for Plan Examiner I by making application to the commission for the IFSAC seal and paying the associated fee.

(b) In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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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Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 429, Minimum Standards For Fire Inspector Certification, concerning §429.201, Minimum Standards for Fire Inspector Personnel, §429.203, Minimum Standards for Basic Fire Inspector Certification, §429.205, Minimum Standards for Intermediate Fire Inspector Certification, §429.207, Minimum Standards for Advanced Fire Inspector Certification, §429.209, Minimum Standards for Master Fire Inspector Certification, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the proposed repeal is to establish a new Chapter 429, titled Fire Inspector and Plan Examiner that will create separate certifications for Fire Inspector and Plan Examiner with a Subchapter A, Minimum Standards For Fire Inspector Certification and Subchapter B, Minimum Standards For Plan Examiner. New Chapter 429 is simultaneously being proposed in this issue of the *Texas Register.*

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five year period the repeal is in effect, there will be no significant impact on state or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the repeal is in effect, the public benefit will be clearer and concise new set of rules regarding Fire Inspector Certification and Plan Examiner Certification.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

The repealed rules will not have an economic impact on micro or small businesses or rural communities as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the repeals are in effect:

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

(2) the repeal will not create or eliminate any existing employee positions;

(3) the repeal will not require an increase or decrease in future legislative appropriatons;

(4) the repeal will not increase or decrease fees paid to the agency;

(5) the repeal will not create a new regulation;

(6) the repeal will not limit an existing rulel;

(7) the repeal will not expand the number of individuals subject to the rule's applicability; and

(8) the repeal will not impact the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposed repeal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code Section 2001.0045 does not apply to the proposed repeal because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENT

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose repeals for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel. The proposed repeal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.201. Minimum Standards for Fire Inspector Personnel.
§429.203. Minimum Standards for Basic Fire Inspector Certification.
§429.205. Minimum Standards for Intermediate Fire Inspector Certification.
§429.207. Minimum Standards for Advanced Fire Inspector Certification.
§429.209. Minimum Standards for Master Fire Inspector Certification.
§429.211. International Fire Service Accreditation Congress (IFSAC) Seal.

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 November 8, 2018.

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.1, §439.19

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations For On-Site Delivery Training, concerning §439.1, Requirements--General, and §439.19 Number of Test Questions.

The purpose of the proposed amendments is to remove language addressing the plan examiner component of Fire Inspector examination. Plan Examiner would become a stand-alone exam and separate certification.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, public benefit from the passage would result from personnel receiving more focused training and testing with regard to applicable assignments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be no effect on persons required to comply with the amendments as proposed. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the amended rules are in effect:

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

(2) the rules will not require the creation or elimination of employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules may result in a minimal increase in testing and certification fees paid to the agency, depending upon whether local governments utilize existing personnel for plan reviews or hire/train new individuals; personnel holding the current Fire Inspector certification may already be approved to perform plan review duties, and thus would not be required to undergo additional testing;

(5) the rules will not create a new regulation, but do separate the Plan Examiner component from the current Fire Inspector exam, and creates a stand-alone exam for Plan Examiner;

(6) the rules will not expand or repeal existing regulations;

(7) the rules may change the number of individuals subject to the rules by requiring the exam for persons not already qualified to perform the applicable duties; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code Section 2001.0045 does not apply to the proposed rules because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENTS

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *deborah.cowan@tcfp.texas.gov.* Comments will be reviewed and discussed at a future commission meeting.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§439.1. Requirements--General.

(a) The administration of examinations for certification, including performance skill evaluations, shall be conducted in compliance with commission rules and; as applicable, with:

(1) International Fire Service Accreditation Congress (IFSAC) regulations; or

(2) National Board on Fire Service Professional Qualifications (Pro Board) regulations for examinations administered by the Texas A&M Engineering Extension Service. Only Pro Board examinations administered by the Texas A&M Engineering Extension Service will be accepted by the commission for certification. In order for a Pro Board document to be accepted for certification, it must:

(A) List the commission issued course approval number for which the examination was conducted;

(B) Indicate that the examination was conducted in English; and

(C) List any special accommodations provided to the examinee. The commission may not issue a certificate for an examination conducted under special accommodations other than those specified in §439.13 of this title (relating to Special Accommodations for Testing).

(b) It is incumbent upon commission staff, committee members, training officers and field examiners to maintain the integrity of the state certification examination process (or portion thereof) for which they are responsible.

(c) The commission shall reserve the authority to conduct an annual review of Pro Board examinations, procedures, test banks, and facilities utilized by the Texas A&M Engineering Extension Service. The commission may also conduct a review at any time for cause and as deemed necessary to ensure the integrity of the certification examination process.

(d) Exams will be based on the job performance requirements and knowledge and skill components of the applicable NFPA standard for that discipline, if a standard exists and has been adopted by the commission. If a standard does not exist or has not been adopted by the commission, the exam will be based on curricula as currently adopted in the commission's Certification Curriculum Manual.

(e) Commission examinations that receive a passing grade shall expire two years from the date of the examination.

(f) An examination for Basic Structure Fire Protection shall consist of four sections: Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level, and Hazardous Materials Operations Level including the Mission-Specific Competencies for Personal Protective Equipment and Product Control. The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.

(g) An examination for Basic Fire Inspector shall consist of two [~~three~~] sections: Inspector I, and Inspector II[~~, and Plan Examiner I~~]. The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.

(h) An examination for Basic Structure Fire Protection and Intermediate Wildland Fire Protection shall consist of five sections: Fire Fighter I, Fire Fighter II, First Responder Awareness, First Responder Operations, and Intermediate Wildland Fire Protection. The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.

(i) All other state examinations consist of only one section.

(j) The individual who fails to pass a commission examination for state certification will be given one additional opportunity to pass the examination or section(s) thereof. This opportunity must be exercised within 180 days after the date of the first failure. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the curriculum applicable to that examination.

(k) An individual may obtain a new certificate in a discipline which was previously held by passing a commission proficiency examination.

(l) If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to Definitions), seeks certification in that discipline, the individual shall complete all certification requirements.

(m) If an individual completes a commission approved training program, or a program that has been evaluated and deemed equivalent to a certification curriculum approved by the commission, such

as an out-of-state or military training program or a training program administered by the State Firemen's and Fire Marshals' Association of Texas, the individual may use only one of the following examination processes for certification:

(1) pass a commission examination; or

(2) submit documentation of the successful completion of the Pro Board examination process administered by the Texas A&M Engineering Extension Service; and

(3) meet any other certification requirements in order to become eligible for certification as fire protection personnel.

(4) An individual cannot use a combination of the two examination processes in this subsection from a single commission approved class for certification. An individual who chooses to submit to the commission examination process may not utilize the other process toward certification.

(n) An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual's or employing entity's good faith clerical error[,] or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order, ruling or agreement restoring the applicant to employment.

§439.19. Number of Test Questions.

(a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.

(b) The number of questions on an examination, sectional examination, or retest will be based upon the specific examination, or number of recommended hours for a particular curriculum or section as shown in the table below. Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.

Figure: 37 TAC §439.19(b)

[~~Figure: 37 TAC §439.19(b)~~]

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 November 8, 2018.

TRD-201804822

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: December 23, 2018

For further information, please call: (512) 936-3812

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.25

The Texas Commission on Fire Protection (the commission) proposes new rule §441.25, concerning Continuing Education for Plan Examiner, to Chapter 441, Continuing Education.

The purpose of the proposed new rule is to add a new section to address the requirement for continuing education for individuals holding a Plan Examiner certification and who are assigned to those duties.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed new rule is in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the proposed new rule is in effect, the public benefit from the passage is clear and precise rule language regarding the continuing education requirements for persons certified and appointed as Plan Examiner. The new rule will enhance public safety by ensuring personnel obtain continuing education in order to perform plan reviews.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be minimal effect on persons required to comply with the new rule as proposed, as the new rule will require two hours of continuing education annually for persons holding Plan Examiner certification and who are appointed to those duties. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the new rule is in effect:

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

(2) the rule will not require the creation or elimination of employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule does not require an increase in fees paid to the agency;

(5) the rule creates a new regulation, requiring two continuing education hours annually for persons holding Plan Examiner certification and who are appointed to those duties;

(6) the rule expands the existing continuing education regulation, adding two hours of continuing education to persons holding Plan Examiner certification and who are appointed to those duties.

(7) the rule will change the number of individuals subject to the rule, to include persons holding the applicable certification and who are appointed to the duties.

(8) The rule is not anticipated to have an adverse impact on the state's economy because the amendment simply adds a requirement for minimal continuing education for persons certified and appointed as a Plan Examiner.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposed new rule, nor does it restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposed new rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS.

Texas Government Code Section 2001.0045 does not apply to the proposed new rule because §2001.0045(c)(6) exempts those rules that are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENTS

Comments regarding the proposed new rule may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to deborah.cowan@tcfp.texas.gov.Comments will be reviewed and discussed at a future commission meeting.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032 which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel.

The proposed new rule implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§441.25. Continuing Education for Plan Examiner.

(a) A minimum of two hours of continuing education in plan review subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for individuals certified as a Plan Examiner and who are appointed to plan examiner duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from Level 1, Level 2, or a combination of both.

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 November 8, 2018.

TRD-201804823
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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CHAPTER 459. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR CERTIFICATION

37 TAC §§459.1, 459.3, 459.5

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 459, Minimum Standards For Fire and Life Safety Educator Certification, concerning §459.1, Fire and Life Safety Educator I Certification, §459.3, Minimum Standards for Fire and Life Safety Educator I Certification, and §459.5, Examination Requirement.

The purpose of the proposed repeal is to establish a new Chapter 459, titled Fire and Life Safety Educator that creates a Subchapter A, Minimum Standards for Fire and Life Safety Educator I and Subchapter B, Minimum Standards for Fire and Life Safety Educator II. Subchapter A will consist primarily of current rule language and Subchapter B will contain all new language. New Chapter 459 rules simultaneously being proposed in this issue of the *Texas Register.*

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed repeal is in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the repealed rules are in effect, the public benefit will be clearer and concise new set of rules regarding Minimum Standards For Fire and Life Safety Educator Certification.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be no effect on persons required to comply with the repeal as proposed. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis rules not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the repealed rules are in effect:

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

(2) the repeal will not create or eliminate any existing employee positions;

(3) the repeal will not require an increase or decrease in future legislative appropriatons;

(4) the repeal will not increase or decrease fees paid to the agency;

(5) the repeal will not create a new regulation;

(6) the repeal will not limit an existing rule;

(7) the repeal will not expand the number of individuals subject to the rule's applicability; and

(8) the repeal will not impact the state's economy.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposed repeal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does

not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code Section 2001.0045 does not apply to the proposed repeal because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENT

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

STATUTORY AUTHORITY

The repealed rules are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposed repeal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.1. Fire and Life Safety Educator I Certification.

§459.3. Minimum Standards for Fire and Life Safety Educator I Certification.

§459.5. Examination Requirement.

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 November 8, 2018.

TRD-201804824
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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CHAPTER 459. FIRE AND LIFE SAFETY EDUCATOR

The Texas Commission on Fire Protection (the commission) proposes new Chapter 459, Fire And Life Safety Educator, Subchapter A, Minimum Standards For Fire and Life Safety Educator I concerning §459.1, Fire and Life Safety Educator I Certification, §459.3, Minimum Standards for Fire and Life Safety Educator I Certification, and §459.5, Examination Requirement; and Subchapter B, Minimum Standards For Fire and Life Safety Educator II, concerning §459.201, Fire and Life Safety Educator II Certification, §459.203, Minimum Standards for Fire and Life Safety Educator II Certification, and §459.205, Examination Requirement.

The purpose of the proposed new chapter is to establish a new chapter title, Fire and Life Safety Educator that creates a Subchapter A, Minimum Standards for Fire and Life Safety Educator I and Subchapter B, Minimum Standards for Fire and Life Safety Educator II. Subchapter A will consist primarily of current rule language and Subchapter B will contain all new language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new rules are in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the new rules are in effect the public benefit from the passage of the new proposal will be the availability of a new, higher level certification for individuals and local governments involved in delivering important fire safety education programs to communities. The new certification will meet the requirements of the National Fire Protection Association Standard (NFPA) 1035.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be no effect on persons required to comply with the new rules as proposed, as the rules do not create a required certification. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the repeal is in effect:

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriatons;

(4) the rules may increase fees paid to the agency only to the extent that individuals choose to pursue the certification, or local governments choose to have personnel certified in the discipline. The certification is not required of persons performing the applicable duties.

(5) the rules will create a new regulation but will only apply to those individuals and local governments choosing to take advantage of the new certification;

(6) the rules will not expand, limit or repeal an existing regulation;

(7) the rules could increase the number of individuals subject to the rules only to the extent that individuals choose to pursue the certification, or local governments choose to have personnel certified in the discipline. The certification is not mandated and is considered a voluntary certification.

(8) Although not anticipated to be significant, any economic impact to the state would likely be positive from the assessment of testing and certification fees from persons pursuing the certification.

TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the

absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS.

Texas Government Code Section 2001.0045 does not apply to the proposed rules because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENT

Comments regarding the proposed new rules may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR I

37 TAC §§459.1, 459.3, 459.5

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.1. Fire and Life Safety Educator I Certification.

(a) A Fire and Life Safety Educator I is defined as an individual who performs professional work in the coordination and delivery of public fire and life safety education, and fire prevention programs.

(b) All individuals holding a Fire and Life Safety Educator I certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) A regulated entity that employs an individual certified as Fire and Life Safety Educator I must report the individual's employment via the commission's online data management system (FIDO system).

(d) Special temporary provision. Individuals are eligible to take the commission examination for Fire and Life Safety Educator I certification by:

(1) providing documentation acceptable to the commission that the individual has successfully completed Fire and Life Safety Educator I certification training that meets the minimum requirements of National Fire Protection Association Standard 1035; or

(2) providing documentation acceptable to the commission of proficiency in fire and life safety education as an employee of a government entity, a member in a volunteer fire service organization, or an employee of a regulated non-governmental fire department; or

(3) holding certification as a Fire Instructor I or higher.

(4) This subsection will expire on February 28, 2019.

§459.3. Minimum Standards for Fire and Life Safety Educator I Certification.

In order to be certified as a Fire and Life Safety Educator I, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire and Life Safety Educator I; or

(2) complete a commission approved Fire and Life Safety Educator I program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire and Life Safety Educator I program must consist of one of the following:

(A) completion of an in-state Fire and Life Safety Educator I program meeting the requirements of the applicable NFPA standard and conducted by a commission certified training provider that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

§459.5. Examination Requirement

Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Fire and Life Safety Educator I certification.

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 November 8, 2018.

TRD-201804825
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR II

37 TAC §§459.201, 459.203, 459.205

The new rule is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

The proposal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.201 Fire and Life Safety Educator II Certification.

(a) A Fire and Life Safety Educator II is defined as an individual who performs professional work in the coordination and delivery of public fire and life safety education, and fire prevention programs.

(b) All individuals holding a Fire and Life Safety Educator II certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) Special temporary provision. Individuals are eligible to take the commission examination for Fire and Life Safety Educator II by:

(1) holding Fire and Life Safety Educator I certification and meeting one of the following requirements:

(2) providing documentation acceptable to the commission that the individual has successfully completed Fire and Life Safety Educator II certification training that meets the minimum requirements of the National Fire Protection Association Standard 1035; or

(3) providing documentation acceptable to the commission of proficiency in fire and life safety education as an employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(4) hold a TCFP Fire Instructor II certification or higher.

(5) This subsection will expire on February 29, 2020.

§459.203 Minimum Standards for Fire and Life Safety Educator II Certification.

In order to be certified as a Fire and Life Safety Educator II, an individual must:

(1) hold as a prerequisite Fire and Life Safety Educator I certification; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire and Life Safety Educator II; or

(3) complete a commission approved Fire and Life Safety Educator II program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire and Life Safety Educator II program must consist of one of the following:

(A) completion of an in-state Fire and Life Safety Educator II program meeting the requirements of the applicable NFPA standard and conducted by a commission certified training provider that was submitted and approved through the commission's training prior approval system; or

(B) completion of an out-of-state educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to meet the requirements of the applicable NFPA standard.

§459.205 Examination Requirement

Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Fire and Life Safety Educator II certification.

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 November 8, 2018.

TRD-201804826
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 23, 2018
For further information, please call: (512) 936-3812

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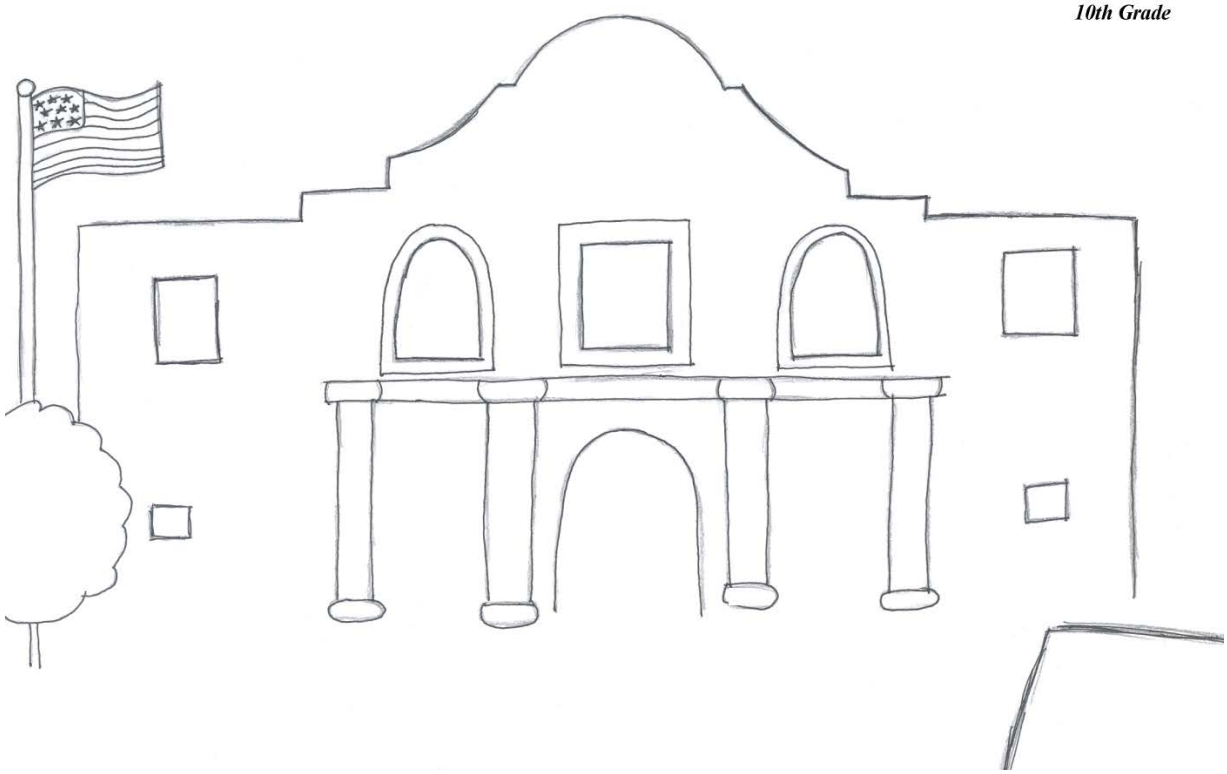
Amber Uballe
10th Grade



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

The Texas Department of Licensing and Regulation withdraws the proposed amended §§84.300 - 84.302 which appeared in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4624).

Filed with the Office of the Secretary of State on November 9, 2018.

TRD-201804840
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 9, 2018
For further information, please call: (512) 463-8179

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Rosemeree Morones
5th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS
SUBCHAPTER C. HUMAN TRAFFICKING PREVENTION SIGN

1 TAC §54.80

The Office of the Attorney General (OAG) adopts a new rule, Chapter 54, Subchapter C, §54.80, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5731). The adopted new rule will not be republished.

The new rule concerns the posting of human trafficking prevention signs in sexually oriented businesses. The new rule is necessary to comply with recent changes to the Business and Commerce Code that require a sign regarding the National Human Trafficking Resource Center to be posted in each restroom of a sexually oriented business.

No comments were received regarding the new rule.

The new rule is adopted in accordance with Business and Commerce Code §102.101, which requires the OAG to adopt rules prescribing the design, content, and manner of display of the required sign. This rule is required in order to implement legislative changes to Business and Commerce Code Subchapter C.

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 November 8, 2018.

TRD-201804838
Amanda Crawford
General Counsel
Office of the Attorney General
Effective date: November 28, 2018
Proposal publication date: September 7, 2018
For further information, please call: (512) 475-3210

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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 §1.11

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Subchapter A, §1.11, Definition of Service-Enriched Housing, without changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6728). The purpose of the repeal is to provide clarification of the term "offsite services" within the Definition of Service-Enriched Housing through adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the definition of Service-Enriched Housing.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity which relates to the handling of reasonable accommodations requests submitted to the Department.

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

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, 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 would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period was held from October 12, 2018, to October 26, 2018, to receive input on the repealed section and no comment was received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed section affects no other code, article, or statute.

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 November 12, 2018.

TRD-201804845
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 2, 2018
Proposal publication date: October 12, 2018
For further information, please call: (512) 475-1762

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10 TAC §1.11

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter A, §1.11, Definition of Service-Enriched Housing, without changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6729) and will not be republished. The purpose of the adopted new section is to provide clarification of the term "off-site services" within the Definition of Service-Enriched Housing.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementing legislation. The rule provides for compliance with Tex. Gov't Code §2306.1091(b) which requires the Department, with the advice and assistance of the Housing and Health Services Coordination Council ("Council"), to define Service-Enriched Housing by rule.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Irvine has determined that, for the first five years the new section will be in effect:

1. The new rule does not create or eliminate a government program. This rule defines Service-Enriched Housing for the Housing and Health Services Coordination Council, which is not required to be applied to activities funded by the Department.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.1091(b).

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the rule. There are no rural communities subject to the rule.

3. The Department has determined that because the rule defines Service-Enriched Housing, which is not required to be applied to activities funded by the Department, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate

nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because it merely provides a definition for the term Service-Enriched Housing, which is not required to be applied to activities funded by the Department; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule is a definition eligible to the entire state there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the new rule will provide clarification to the definition of Service-Enriched Housing. There will not be any economic cost to any individuals required to comply with the new section because the rule has already been in place and is only being changed to clarify the definition.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also 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 because the rule provides clarification to the definition of Service-Enriched Housing for the Housing and Health Services Coordination Council, as required by Tex. Gov't Code, §2306.1091(b).

REQUEST FOR PUBLIC COMMENT. The public comment period was held from October 12, 2018, to October 26, 2018. No public comment was received.

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

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 November 12, 2018.

TRD-201804846
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 2, 2018
Proposal publication date: October 12, 2018
For further information, please call: (512) 475-1762

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §§8.1, 8.3 - 8.5

The Texas State Library and Archives Commission (Commission) adopts amendments to 13 Texas Administrative Code (TAC) §§8.1, 8.3 - 8.5, TexShare Library Consortium. The Commission adopts the amendments without changes to the proposed text as published in the *Texas Register* on September 7, 2018, at (43 TexReg 5731). The rules will not be republished.

The amendments as adopted provide for the increasing prevalence of information in electronic format, including:

Rule §8.1, amends the definition of an institution of higher education for purposes of eligibility for participation in the TexShare program to be consistent with definitions for certain classes of institutions found in the Texas Education Code.

Rule §8.3, amends the list of certain types of institutions eligible to participate in TexShare as affiliate members, including public school districts, open enrollment charter schools, and nonprofit libraries.

Rule §8.4, amends the date of a reporting requirement for some categories of members and affiliate members to determine continued eligibility for membership from January 15 to December 15.

Rule §8.5, amends the composition of the TexShare Advisory Board to specify types of institutions represented, including public school districts which are currently not represented but which under the proposed revisions would be eligible for affiliate membership.

Reasoned Justification under Texas Government Code Section 2001.033(B):

The amendments were proposed for adoption for the following purposes:

Rule §8.1 was proposed for amendment to clarify the types of institutions eligible for full TexShare membership by aligning the definition of an institution of higher education with specific definitions found in the Texas Education Code §61.003 and incorporated in Texas Government Code §441.221 by reference.

Rule §8.3 was proposed for amendment to eliminate obstacles to membership and expand the number of institutions eligible for affiliate membership to be consistent with purposes of the statute and to derive greater value for more Texans from the state's investment in TexShare resources.

Rule §8.4 was proposed for amendment to better align reporting periods with the academic calendar and thereby ease the reporting burden for member institutions.

Rule §8.5 was proposed for amendment to ensure representation on the TexShare Board of all categories of member institutions.

No comments were received regarding the adoption of the amendment.

The amended rules are adopted pursuant to authority granted under Texas Government Code §441.222 that allows the Commission to establish and maintain the TexShare Consortium as a resource-sharing consortium and Texas Government Code §441.225 and §441.226 that authorize the Commission to adopt rules to govern the operation of the consortium and the organization and structure of the advisory board.

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 November 8, 2018.

TRD-201804829
Jennifer Peters
Director
Texas State Library and Archives Commission
Effective date: November 28, 2018
Proposal publication date: September 7, 2018
For further information, please call: (512) 463-5456

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PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.7, §12.9

The Texas Historical Commission (hereafter referred to as the commission) adopts amendments to Chapter 12, §12.7 and §12.9 of the Texas Administrative Code, related to the Texas Historic Courthouse Preservation Program. Section 12.7 is adopted without changes to the text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5736) and will not be republished. Section 12.9 is adopted with changes to the text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5736) and will be republished.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the authority of Texas Government Code §442.005(i), which allows the Commission to provide matching grants to assist the preservation of a historic structure significant in Texas or American history, architecture, archeology or culture; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0081(h), which requires the Commission to adopt rules for the historic courthouse preservation program.

These amendments are adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Texas Historic Courthouse Preservation Program. The adopted amendments implement Sections 442.0081(c), 442.0081(e)(7), and 442.0083(b) of the Texas Government Code.

No other statutes, articles, or codes are affected by these amendments.

§12.9. Application Requirements and Considerations.

(a) A county or municipality that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

(1) the address of the courthouse;

(2) a statement of the historic designations that the courthouse has or is likely to receive;

(3) a statement of the amount of money that the county or municipality commits to contribute to the project;

(4) a statement of previous county or municipal monies spent on planning which the county or municipality may be allowed as credit toward their match;

(5) a statement of whether the courthouse is currently functioning as a courthouse or other public facility;

(6) copies of any plans, including the required master preservation plan or construction plans and specifications, that the county or municipality may have for the project unless the commission already has these plans on file;

(7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;

(8) statements of support from local officials and community leaders; and

(9) the current cost estimate of the proposed project; and

(10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

(1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work.

(2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

(1) the status of the building as a functioning courthouse;

(2) the age of the courthouse;

(3) the degree of endangerment;

(4) the courthouse is subject to a current conservation easement or covenant held by the commission;

(5) the proposal is in conformance with the approved master plan and addresses the current condition and needs of the property in proper sequence;

(6) the county or municipality agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

(8) the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR §101(a)(2)(A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation;"

(10) the degree of surviving integrity of original design and materials;

(11) if a county or municipality submits completed and commission-approved construction plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's or municipality's provision of a match greater than 15% of the grant request;

(14) the degree to which the proposal achieves a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county or municipal government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records, if county-owned;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §§442.0081 - 442.0083 and the Antiquities Code of Texas, Texas Natural Resources Code Chapter 191);

(20) the effort to protect and enhance surrounding historic resources;

(21) the evidence of community support and county or municipality commitment to protection; and

(22) the applicant's local funding capacity as measured by the total taxable value of properties in the jurisdiction.

(d) Other Considerations.

(1) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes on an expedited basis and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to address or prevent catastrophic damage to the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications; or

(C) Previously awarded projects that require additional funding to accomplish the intended goals of the project; or

(D) Updates to approved courthouse preservation master plans.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county or municipality to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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-201804827
Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: November 28, 2018
Proposal publication date: September 7, 2018
For further information, please call: (512) 463-6094

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CHAPTER 21. HISTORY PROGRAMS
SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.12

The Texas Historical Commission (Commission) adopts new §21.12, outlining a process to request review of marker text for errors based on verifiable, historical evidence and for the Commission to administer reviews. The new rule is adopted without changes to the proposed text, as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5743). The new rule will not be republished.

The new rule is adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

The new rule implements Texas Government Code §442.006 and 442.0051.

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

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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Mark Wolfe
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-5853

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.247

The Public Utility Commission of Texas (commission) adopts an amendment to §25.247, relating to rate review schedule, with changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4622). The amended rule establishes a schedule requiring periodic filings for rate proceedings by non-investor-owned transmission service providers (non-IOUs) operating within the Electric Reliability Council of Texas (ERCOT). Project Number 48377 is assigned to this proceeding.

The commission received comments on the proposed amendment from Brazos Electric Power Cooperative, Inc. (Brazos); Brownsville Public Utilities Board (Brownsville); East Texas Electric Cooperative, Inc. (ETEC); LCRA Transmission Services Corporation (LCRA TSC); Texas Public Power Association (TPPA); Office of Public Utility Counsel (OPUC); South Texas Electric Cooperative, Inc. (STEC); Texas Electric Cooperatives, Inc. (Texas EC); and Texas Industrial Energy Consumers (TIEC). No party requested a public hearing.

Comments related primarily to the issue of periodic filing requirements

Brownsville commented that all transmission costs are ultimately paid by the ratepayers of load serving entities, and these costs therefore warrant periodic review to ensure the reasonableness of the amounts. Brownsville asserted, however, that the tremendous range of sizes of the various municipally owned utilities (MOUs) in ERCOT warrants a nuanced approach to the matter. Brownsville and TPPA commented that Docket No. 47777, which was the commission's most recent proceeding addressing the total amount of wholesale transmission costs in ERCOT, included 12 MOUs with a commission-established transmission cost of service (TCOS), and that, collectively, those 12 public power systems account for approximately 11% of the $3.6 billion total ERCOT TCOS. TPPA further commented that close to two thirds of this amount comes from the two largest MOUs, and both TPPA and Brownsville noted that the six smallest MOUs account for only 0.39% of the total TCOS amount. Brownsville and TPPA also stated that the annual amounts of TCOS for MOUs range in size from approximately $170 million to just under $22,000.

Texas EC commented that its members include 74 electric cooperatives operating in Texas, and 25 of these provide transmission service in ERCOT and are affected by the proposed rule. Texas EC stated that, of this group of non-IOUs, there are only two electric cooperatives--Brazos and STEC--with an ERCOT TCOS of more than $50 million. Texas EC commented that the vast majority of its members affected by this rule are much smaller distribution cooperatives that rely generally on other transmission providers to expand transmission infrastructure as needed. Texas EC also noted that the average TCOS of smaller cooperative systems is $1,715,124, and that five cooperative transmission providers in ERCOT have a TCOS of less than $100,000. Texas EC stated that MOU systems and LCRA TSC are also impacted by the proposed rule, and that, as is the case with cooperatives, there are two MOUs--CPS Energy (San Antonio) and Austin Energy--with an ERCOT TCOS of $50 million or more. Texas EC commented that all the rest of the MOUs (ten systems) are much smaller, with an average TCOS of $15,301,106. Texas EC commented that small systems, which it defined as having a TCOS of less than $50 million, make up only 5% of the total ERCOT TCOS, and that an exemption for small systems would recognize the disproportionate cost impact to such systems (and the potential for increased total costs) that is overlooked by the blanket approach set out in the published rule. Texas EC stated that a framework for periodic rate review that allows greater latitude for small systems would reduce the cost implications present in the published rule.

Brownsville, STEC, and Texas EC commented that the commission should consider ratepayer costs and benefits of scheduled filing requirements, given that ratepayers ultimately pay the costs of required filings and reporting. Brownsville averred that it is not unreasonable to assume that an MOU will determine for itself whether a TCOS filing would be financially advantageous to its system, and the commission should either develop a cost and benefit analysis for the smaller non-IOUs to determine whether they must file a TCOS proceeding, or, as a proxy for the cost and benefit determination, set a floor of some percentage of the total market TCOS below which the smaller non-IOUs would not be required to file a TCOS case. Brownsville commented that because of the difficulties in creating objective cost and benefit criteria (i.e., criteria that weigh the cost of filing a TCOS against the value of the TCOS) that will survive the test of time, using a proxy for the cost and benefit determination would be the most workable solution. To this end, Brownsville proposed that if a non-IOU's TCOS is less than one percent of the total TCOS for the ERCOT market, then that non-IOU should only be encouraged--not required--to file its updated TCOS in accordance with the schedule set out in the rule. Brownsville suggested that using a threshold of one percent of the total market TCOS is a reasonable proxy for a *de minimis* amount of TCOS, and that this level reasonably approximates the universe of non-IOUs whose costs of filing for a TCOS review would exceed the benefits of such a filing.

TPPA expressed agreement with Brownsville's suggestions and similarly commented that while it understands the value of pe-

riodic rate filings, it also recognizes that interim TCOS updates are not without costs. TPPA stated that this problem is particularly concerning for smaller MOUs with relatively minor amounts of TCOS and more limited resources, and that in some cases the costs of an interim update to both the MOU and commission might exceed the "rounding error" effect on overall transmission rates. TPPA urged the commission to consider the impact of costs and the limited potential benefits of implementing filing requirements for these smaller entities, and recommended that, in the interest of administrative efficiency, the commission consider a TCOS threshold below which small systems would be exempt or placed on a longer timeframe for review.

Texas EC and Brazos likewise commented that setting a fixed schedule for a non-IOU to file a TCOS case causes the utility to incur the costs of a rate proceeding regardless of whether there are any savings to be achieved. Texas EC commented that rate case expenses may vary significantly from case to case, but that generally, a comprehensive TCOS review involves more issues and requires more time, effort, and expense than an interim update filing. Texas EC submitted that, based on ten relatively recent cases, the average cost of a comprehensive TCOS review for a non-IOU is approximately $122,000. Texas EC commented that the cost of interim TCOS updates is not available in commission records, but estimated a range of $20,000 to $30,000. Texas EC further stated that interim TCOS updates almost always involve hiring outside lawyers and consultants to prepare and prosecute the filing, and that a small non-IOU when filing an interim TCOS case may well incur rate case expenses in the tens of thousands of dollars. Texas EC commented that while such amounts may be dwarfed when compared to the costs incurred in IOU cases, the dollars can be significant for small non-IOUs, and that for many small non-IOUs the cost of preparing and prosecuting a TCOS case may outweigh any benefit that might be gained from the review process. Texas EC submitted that mandatory periodic filings, as proposed in this rulemaking, will expend utility and commission resources and will in some instances result in increased transmission charges for consumers.

Texas EC further commented that it does not oppose periodic review of a transmission service provider's TCOS in circumstances where it makes sense. Texas EC stated that, given that the commission has the ability to routinely monitor a non-IOU's transmission cost of service and can initiate a more thorough inquiry based on its review, the ideal regulatory approach would be one in which small non-IOUs would update their TCOS once, with ongoing monitoring by the commission going forward. Texas EC submitted that this approach would seem to meet the commission's objectives at less cost than mandatory periodic TCOS reviews. Texas EC stated that while it is not proposing a specific threshold for exemption from the periodic filing requirement, entities contributing a minimal amount to total ERCOT TCOS could reasonably be excluded from the filing schedule, with the understanding that the commission has the ability to review TCOS on an ongoing basis, and non-IOUs with TCOS amounts above the minimum threshold could remain subject to a tiered filing schedule.

Texas EC additionally commented that although an initial rate review followed by ongoing monitoring of small systems would likely have cost advantages in comparison to the approach described in the published rule, if the commission intends to place non-IOUs on a filing schedule regardless of a *de minimis* exemption, Texas EC proposed--and TPPA and ETEC agreed with--the concept of a tiered approach with specified thresholds. Texas EC recommended a threshold of $50 million, proposing that if a non-IOU's TCOS is $50 million or more, then it would file a TCOS application every 48 months; and if a non-IOU's TCOS is less than $50 million, it would file a TCOS application every 96 months. Texas EC submitted that applying a less frequent requirement for smaller systems would reasonably balance the cost implications and burdens on small systems with the potential for TCOS reduction, and that it would accomplish the commission's goals as described in the preamble of the published rule. Brazos and Brownsville expressed agreement with these points, although Brownsville stated that even after 96 months, the cost of filing a TCOS may still exceed the benefit of recovering the costs of the transmission assets that were constructed subsequent to the most recent commission action to set the related transmission rates.

OPUC expressed support for Texas EC's suggestions that a *de minimis* exception should be applied for the very smallest non-IOUs, such as the 12 entities that have TCOS levels less than $300,000. OPUC stated that it agrees with Texas EC that a different, perhaps simplified approach may be warranted for these smallest of companies, and that, as Texas EC suggested, TCOS recovery for these smaller entities may be more effectively monitored by alternate means, such as through their respective earnings reports. OPUC also stated that it agreed in concept with Brownsville's comments concerning the significant size disparity among non-IOU, and that the cost-versus-benefits assessment of such a review may be different for the smallest companies and warrant a different frequency, level of compliance, or other standard.

STEC commented that, in contrast to a "one size fits all" approach to non-IOU filings, Texas EC has taken a more reasoned approach by proposing a tiered system that considers the magnitude of the possible excess revenue and the possible costs of a proceeding. STEC stated that Texas EC's tiered approach recognizes that there is a cost of preparing and processing an interim update and that the relatively low TCOS revenue of the non-IOUs justifies a longer time between required filings. STEC stated that while it continues to question the need for a schedule for filings by non-IOUs, it is willing to accept Texas EC's proposal if an exemption is allowed for smaller non-IOUs for both the initial and scheduled TCOS filings. STEC commented that even though it would be placed in the higher tier proposed by Texas EC, it has been filing interim updates on a regular basis and anticipates that it will need to continue to file interim updates periodically regardless of whether the commission establishes a schedule.

STEC further commented that although Texas EC did not suggest a specific threshold that would apply to determine which entities are subject to an exemption, the exemption should recognize the small impact that the smaller cooperatives have on the total ERCOT TCOS. STEC stated that the total average four coincident peak (4CP) for 2017 was 67,273,101.1 kilowatts (kW), and that in order to reduce the total postage stamp rate by $0.10 per kW, the commission would need to reduce TCOS by $6,727,310. STEC suggested that an exemption based upon an individual cooperative having a total TCOS of less than $7 million would be an appropriate threshold, and that recognizing that a TCOS review would not eliminate the total amount of a cooperative's TCOS, the ultimate result of the proceeding would be less than a $0.10 decrease in the TCOS rate (unless the cooperative justified an increase in its rate). STEC stated its belief that this threshold is reasonable and appropriate and that it would allow the commission to focus its TCOS reviews on the larger entities that have a greater impact on TCOS, and

that such a threshold would also relieve the commission and the cooperatives of the costs imposed by unneeded reviews implemented through an arbitrary schedule.

STEC also pointed out that the commission has recognized exemptions in other instances in its rules; for example, the commission's market power rule (16 Texas Administrative Code (TAC) §25.504) establishes an exemption for generation entities by providing that "a single generation entity that controls less than 5% of the installed generation capacity in ERCOT...is deemed not to have ERCOT-wide market power." STEC noted that Texas EC recognized that there should be an exemption from periodic TCOS filings for small non-IOUs, and that under Texas EC's proposal, although the small non-IOUs would not be subject to a schedule, they would still be subject to the commission's authority and any individual non-IOU could be required to make an interim update filing if the commission felt that the particular non-IOU was overearning. STEC asserted that this would enable the commission to continue to review all non-IOUs while not imposing additional costs and workload on both non-IOUs and the commission.

ETEC expressed agreement with other commenters recommending that the commission consider the significant differences in size of the non-IOUs when crafting the proposed rule. ETEC stated that its TCOS from the most recent wholesale transmission matrix (Docket No. 47777) was $73,207, and, based on this figure, the $122,000 amount of rate case expense as estimated by Texas EC for a comprehensive TCOS review and the estimated range of $20,000 to 30,000 for an interim TCOS update may be a disproportionate burden on both ETEC and the ERCOT market, particularly if such expenses are required every few years. ETEC stated that because non-IOUs vary significantly in size, a more tailored rule would ensure greater efficiency for both the affected non-IOUs as well as the ERCOT market. ETEC also stated that it supports a *de minimis* exception for the smallest non-IOUs, and that the exception should balance the expected costs with the expected benefits of periodic TCOS filings. ETEC stated that these recommendations would allow the commission to review 95% of the total ERCOT TCOS while avoiding an unnecessarily frequent review of applications by 34 non-IOUs (ETEC commented that these 34 entities make up 69% of the total number of transmission service providers). ETEC commented that, all else being equal, the commission could receive 95% of the benefit by incurring 31% of the cost; stated another way, the commission would have to more than triple the number of applications it reviews--increasing from 15 to 49--and thus triple the cost in order to obtain the remaining 5% of benefit.

TIEC commented that it welcomes the creation of a requirement for non-IOUs in ERCOT to file regular interim TCOS updates. TIEC stated that because transmission costs are uplifted and socialized among loads within ERCOT, it is imperative to have cost reductions (such as in depreciation expense) timely reflected in wholesale transmission rates. TIEC commented that more frequent updates will help ensure that ratepayers are not overpaying for transmission service, and TIEC expressed its belief that the commission should modify the published rule by reducing the time between required interim TCOS updates from 48 months to 24 months. TIEC argued that a 24-month requirement is not a significant burden for either the transmission service providers or the commission, given that interim TCOS filings consist of a five-schedule Excel spreadsheet with information on current rate base and depreciation levels. TIEC also commented that the filings are eligible for informal disposition under (Procedural Rule) 16 TAC §22.35(b)(1) and can be resolved in a matter of weeks after the commission staff reviews the application to ensure that it is not materially deficient. TIEC commented that interim TCOS updates thus require minimal resources to execute and are typically not controversial; TIEC additionally asserted that an interim TCOS proceeding is much less involved than a comprehensive TCOS rate case and does not require outside consultants, lawyers, or significant rate case expenses. TIEC commented that, given the relatively minimal time and resources required to file and process interim TCOS updates, the benefits of more timely filings far outweigh the administrative costs and, as such, the commission should reduce the time period for the filing requirement from 48 months to 24 months.

TIEC further contended that the commission should not exempt any class of non-IOUs from this rule. TIEC commented that while some parties argue that the commission should not require transmission service providers with small amounts in TCOS to file regular updates because the cost of those filings could outweigh the potential savings to ratepayers, the relatively small size of a transmission service provider is not an excuse for failing to appropriately reflect changes in its cost of service in TCOS rates that are socialized to other ERCOT customers. TIEC stated that all transmission service providers should be prepared to comply with reasonable TCOS update requirements, and that creating an exemption for tiny non-IOUs would undermine the rule's basic purpose, which is to satisfy the commission's obligation to ensure that all transmission service providers' rates remain just and reasonable over time. TIEC commented that relying on the earnings monitoring process or some undefined "cost benefit criteria" to determine when small transmission service providers must file interim updates will leave those transmission service providers in exactly the position they were in before this rulemaking, and that although the impact of allowing individual small transmission service providers to go long periods of time without updating their rates may be small, in the aggregate they contribute to inflated TCOS charges throughout ERCOT and are worthy of being addressed. TIEC also asserted that the commission should reject claims that filing an interim TCOS update would pose a burden for the smallest transmission service providers, stating that if a transmission service provider is not financially or technically capable of filing for an interim TCOS update every few years, then the commission should question whether that entity can satisfy its obligation to provide safe and reliable transmission service.

TIEC further commented that the commission should reject Texas EC's request to allow non-IOUs with as much as $50 million in TCOS to go up to eight years between TCOS updates, and that Texas EC attempts to justify this proposal by speculating that the cost of requiring these transmission service providers (most of which are electric cooperatives) to file regular TCOS updates could outweigh the benefits to ratepayers. TIEC contended that Texas EC's own comments demonstrate that the cost of regular interim TCOS updates is minimal and dwarfed by the amount that ratepayers stand to save. TIEC questioned whether Texas EC's highest estimate for the cost of filing an interim TCOS update of $30,000 is a reasonable estimate; TIEC stated that, even using Texas EC's number, filing regular interim TCOS updates would cost a non-IOU just $15,000 per year under TIEC's proposed 24-month schedule for interim updates, or $7,500 per year under the published rule. TIEC contended that even if the commission required each of the 33 non-IOUs with less than $50 million in TCOS to file an interim update every two years, the total cost of those filings would be approximately one quarter of one percent (or 0.25%) of the nearly $200 million

that those 33 entities collectively have in TCOS. TIEC argued that under its proposal to require an interim update every 24 months, the filings for non-IOUs with less than $50 million in TCOS will pay for themselves if they result in even a 0.26% reduction in those entities' TCOS, and it is reasonable to expect that adjusting for depreciation alone will reduce transmission rates by an order of magnitude more than that. TIEC contended that it will therefore be cost effective in the aggregate and in the public interest to require non-IOUs with less than $50 million in TCOS to file interim TCOS updates every two years, as TIEC proposed, and that there is no reason to adopt Texas EC's tiered approach.

Brazos expressed its disagreement with the points raised by TIEC and commented that TIEC offered no data to support its proposition that there is no burden to file interim TCOS proceedings. Brazos and TPPA noted that, based on the data presented by Texas EC in its comments, many small non-IOU transmission service providers could incur costs to prepare and file an interim TCOS update that would equal or exceed any change in the entity's TCOS revenue requirement. Texas EC commented that, as an example, Southwest Texas Electric Cooperative, Inc. has a TCOS amount of $21,471, and that it would not be surprising if the cost of an interim TCOS case equaled or exceeded that amount. Texas EC further stated that if a non-IOU is to recover its rate case expenses, it will have to initiate a comprehensive TCOS review--a type of proceeding that, as Texas EC pointed out in its initial comments, would add, on average, approximately $122,000 of rate case expenses. Texas EC contended that it is difficult to comprehend how the costs associated with filing an interim update can be considered insignificant, as asserted by TIEC, when the cost of the filing may exceed the utility's annual TCOS recovery.

TPPA stated that it is important to note that the part of the filing process that involves considerable time and expense is the generation of the information and data that go into the Excel spreadsheets. TPPA argued that TIEC is therefore incorrect when it asserts that these filings "do not involve litigation or require a transmission service provider to retain additional consultants or attorneys." TPPA agreed with Texas EC's comment that interim updates "almost always involve hiring outside lawyers and consultants to prepare and prosecute the filing." TPPA stated that its member systems also report that the actions of preparing and processing TCOS filings at the commission often, if not always, involve outside consultants and attorneys, and that this is certainly the case for non-IOUs below Texas EC's proposed $50 million TCOS threshold for less frequent rate filings. TPPA commented that a standing rate department and a standing group of in-house lawyers would be cost-prohibitive for medium and small non-IOUs, and that TIEC's proposal to reduce the filing timeline between interim updates to 24 months would result in unnecessary rate case expenses and strain the resources of the commission, with little or no benefit to customers. TPPA further commented that TIEC's recommendation for a 24-month schedule regardless of the transmission service provider's size would result in nearly continuous preparation and processing of TCOS proceedings.

STEC commented that the only reason TIEC offers for its expedited schedule is that interim updates are more limited in scope than a full rate case and "do not involve litigation or require a transmission service provider to retain additional consultants or attorneys." STEC noted that, as an example, TIEC cited to Docket No. 47591, a 2017 interim update by Sharyland Utilities, L.P., and noted that the filing was only 83 pages long. STEC stated that there is no indication, however, of the costs involved in preparing and processing the interim update, and that even a cursory review of Docket No. 47591 reveals that the application was filed by an outside law firm and supported by pre-filed testimony from outside consultants. STEC argued that the fact that the application consisted of "only" 83 pages does not demonstrate that attorneys and consultants are not necessary, and that the presence of the outside attorneys and consultants who are familiar with commission proceedings may have helped to focus the presentation on only those matters relevant to the commission's review. STEC stated that, accordingly, TIEC's reference to Docket No. 47591 does not demonstrate that outside attorneys and consultants are not needed in the preparation and processing of an interim update.

Brownsville responded to TIEC's concern about fully depreciated assets lingering under an inappropriately higher rate by stating that, although that phenomenon may be true for some transmission service providers, many of the smaller non-IOUs have a minimal amount of transmission costs that, in the context of the wholesale market's total transmission costs, would be nearly lost in rounding. Brownsville contended that TIEC's concern ignores the fact that most, if not all, non-IOUs must generally increase their transmission infrastructure over time, but because the smaller non-IOUs must balance the cost of the process of seeking an update of their transmission costs against the value of recovering those transmission costs, some small non-IOUs have built transmission facilities without seeking to recover those additional costs from the wholesale market. Brownsville stated that for these smaller non-IOUs, filing a TCOS update has not been worth it, even if that meant leaving some costs unrecovered, and that with a rule requiring all non-IOUs to seek recovery of their TCOS amounts, many of the smaller non-IOUs would be forced to seek recovery of the transmission costs that they had not previously sought from the market. Brownsville opined that this means that, contrary to TIEC's assertion that transmission rates would go down, the smaller non-IOUs would likely be filing TCOS proceedings and increasing the market's total transmission costs, albeit at a minimal level because of the small size of their TCOS amounts.

Texas EC commented that the commission should reject TIEC's recommendations because they impose unnecessary costs and are based on assertions that are plainly false. Texas EC stated that while it agrees that an interim TCOS update is generally less complex than a comprehensive TCOS proceeding, to say that an interim TCOS case does not require outside consultants, lawyers, or significant rate case expense is demonstrably false. Texas EC stated that in 2015, 2016, and the first nine months of 2017, there were 14 interim TCOS cases filed by non-IOUs, and every one of those cases involved a lawyer representing the applicant; additionally, half of those cases involved an outside consultant testifying on behalf of the applicant, and the other half relied upon in-house personnel to provide testimony or relied on both in-house personnel and outside consultants. Texas EC stated that non-IOUs have individually and collectively concluded that it is necessary to have lawyers and consultants to assist them in complying with the commission's rules and procedures, and that such a conclusion is logical, given that the commission staff participates in every case and is represented by counsel and a cadre of experts who evaluate the merits of the cases and are available to testify if they identify any issues. Texas EC argued that if a non-IOU is to be on an equal footing, it needs counsel and usually one or more consultants, and that

TIEC's argument that interim filings do not require outside consultants or lawyers has no basis in fact.

Texas EC also argued that, relative to the requirements of the published rule, requiring a TCOS filing every 24 months would double the utility and commission resources expended on the reviews, and that transmission service providers are already required to file an earnings report every year. Texas EC argued that TIEC provided no evidence of commensurate benefits to justify a TCOS filing every two years, and that TIEC's recommendation should be rejected on that basis. Texas EC further commented that TIEC's proposal makes no attempt to weigh the costs against the benefits, and that a mandatory filing schedule forces all non-IOUs to incur the cost of a TCOS case; moreover, even if the case is likely to result in no change or an increase in TCOS and no benefits are achieved, the utility will still incur the cost of filing and prosecuting an interim or comprehensive TCOS case. Texas EC further argued that TIEC assumes there will be benefits because depreciation should be reducing rate base; Texas EC noted, however, that there may be a number of offsetting factors, including transmission plant additions, increased operations and maintenance expenses, and changes in authorized rate of return, and that it is not at all clear that TIEC's assumptions are correct. Texas EC commented that the TCOS amounts of some non-IOUs will increase and others will decrease as a result of TCOS reviews; moreover, the most recent earnings reports show that four electric cooperatives are actually earning a negative rate of return, and the earnings reports for 2017 also show that 20 out of the 24 electric cooperatives with ERCOT transmission assets are earning less than their authorized rate of return. Texas EC stated that it provided this information to ensure that the commission is fully aware that establishing a mandatory filing schedule may increase wholesale transmission charges in ERCOT.

STEC stated that under TIEC's proposal to shorten the time period for interim updates from 48 months to 24 months and to expedite the implementation period from five years to two years, non-IOUs would be subject to more frequent reviews of their TCOS rates than the commission's recently adopted scheduling rule requires for IOU transmission providers. STEC contended that TIEC's comments totally ignore the relative impact of non-IOUs versus IOUs on the level of TCOS charged in ERCOT, given that the cooperatives, in total, have a TCOS amount of $239,349,530, or less than 7% of the $3,584,848,889 TCOS amount included in the transmission matrix in Docket No. 47777. STEC additionally noted that the calculated postage stamp rate based on the cooperatives' TCOS is $3.353979 per kW, also less than 7% of the $53.582825 postage stamp rate calculated in Docket No. 47777. Based on this information, STEC pointed out that more than $50.00 of the total postage stamp rate is caused by entities other than cooperatives, and that TIEC offers no reasoned justification for subjecting the $3.35 of TCOS caused by the cooperatives to more frequent scrutiny than the more than $50.00 of TCOS caused by all other entities.

STEC further responded to TIEC's comments concerning the fact that some non-IOUs have not had a TCOS review for many years. STEC expressed its disagreement with the need for an initial filing by those non-IOUs and stated that TIEC's comments fail to consider the relative impact that those transmission service providers have upon TCOS amounts. STEC used information from Docket No. 47777 and provided data on the cooperatives that have not updated their TCOS since prior to January 1, 2012, and stated that, looking solely at those cooperatives, their total TCOS is $17,639,502, or less than 0.5% of the total TCOS found by the commission in Docket No. 47777. STEC stated that the total postage stamp rate for these cooperatives would be $0.182047 per kW, less than 0.4% of the $53.582825 postage stamp rate calculated in Docket No. 47777 and less than half of the $38,890,476 TCOS increase recently granted in November 2017 to CenterPoint Energy Houston Electric in Docket No. 47610. STEC also noted that the recent transmission matrix docket's rates for the cooperatives are very low, none higher than $0.05 per kW, while the IOUs all have rates exceeding $1.00 per kW, topped by the $12.889478 per kW of Oncor Electric Delivery Company. STEC commented that, in view of these differences between these cooperatives and the much larger IOUs, it is more reasonable to focus the commission's resources--and the transmission service providers' resources--on the larger IOUs rather than these 17 cooperatives that have minimal impact on TCOS. STEC argued that there is no justification for requiring these 17 cooperatives to file separate TCOS proceedings just to determine if the postage stamp rate could be reduced by some fraction of the total $0.18 per kW that these cooperatives cumulatively add to TCOS (approximately $0.01 per kW per cooperative TCOS proceeding).

STEC also stated that TIEC's comments imply that some cooperatives have not been subject to review by the commission for many years, but that this is not correct. STEC noted that cooperatives, like all other transmission service providers, are subject to an annual earnings review by commission staff to determine whether any of the entities should be required to file a proceeding for a more in-depth review, and that, for each year since 2006, cooperatives that provide transmission service have filed their earnings monitoring reports for review by the commission staff. STEC commented that since 2006, the commission staff has either been silent on the results of its review or has expressly concluded that no further action was required for the cooperatives and other non-IOUs. STEC stated that for any cooperative that did not file an interim TCOS update during this period, the cooperative had access to the same information as the commission staff and likely reached the same conclusion as the staff that, after considering the revenue involved in comparison to the potential costs of a proceeding, no update was necessary.

STEC further stated that although the commission staff has not recommended a filing by a cooperative in recent years, it has done so in the past. STEC noted that as part of the review of the 2001 earnings reports, the commission staff identified three cooperatives (Grayson-Collin Electric Cooperative, San Miguel Electric Cooperative, and Southwest Texas Electric Cooperative) and one MOU (Greenville Electric Utility System) as potentially overearning, and that the commission staff intended to initiate rate cases against each of these non-IOU entities to reduce their then-current TCOS rates. STEC stated that the commission staff indicated that reducing the cooperatives' rates would result in approximately a one million dollar reduction in TCOS, but that these cases resulted in a total reduction of only $46,399, rather than the $1,060,804 estimated by staff. STEC suggested that the commission's experience in those dockets probably influenced the commission staff's actions in the recent earnings reviews noted previously, in which the staff recommended no further action in "consideration of the relative magnitude of possible excess revenue in comparison to the potential costs of comprehensive rate proceedings."

LCRA TSC stated that it supports the published rule as a reasonable means of accomplishing the goal of establishing the regular filing and the review of non-IOU rate updates, and that the published rule balances the comments and concerns that LCRA

TSC and other parties expressed in previous projects regarding the provisions of 16 TAC §25.247.

Commission Response

The majority of parties' comments in this project focus on the central issue of whether an all-inclusive, uniform filing schedule is in the public interest from the standpoint of overall costs and benefits. Historically, neither statutory provisions nor commission rules have required non-IOUs to make periodic rate-review filings on a specified schedule. Because the regulatory environment has evolved, however, and given that over two decades have passed since some non-IOUs under the commission's rate-setting authority have undergone any type of update with regard to their costs of providing wholesale transmission service in ERCOT, the commission concludes that establishing a scheduling framework for the periodic review of a non-IOU's rates for transmission service is reasonable and consistent with the statutory directive of ensuring just and reasonable rates. As discussed in greater detail below, after consideration of the views expressed by the majority of the commenting parties, the commission in its adoption of the rule retains the basic structure of the published rule, but revises the uniform nature of the published rule's scheduling provisions to take into account the significant differences in size between the various non-IOUs.

As a preliminary matter, the commission agrees with the comments of many of the parties that, for small non-IOUs, the cost of filing a rate proceeding is one of the most important factors in the overall assessment of whether a given framework for periodic filing requirements is beneficial and cost-effective. In addressing this basic point, Texas EC, for example, commented that the cost to a non-IOU of filing a comprehensive rate case is approximately $122,000; Texas EC additionally estimated that the cost of filing a more limited-scope interim TCOS proceeding is in the range of $20,000 to $30,000. Related to this issue, TPPA stated that, for the preparation of interim TCOS filings, the key factor that involves time and incurs expense is the basic process of generating the information and data that go into the Excel spreadsheets.

With regard to the parties' comments addressing these points, the commission finds noteworthy the fact that much of the information that each non-IOU provides annually in its earnings report is the very same information required for part of the filing of an interim TCOS update. For example, the schedules in the commission's filing form for non-IOU earnings reports require the reporting entity to provide various data from its last comprehensive rate proceeding--data such as the amounts of various types of expenses (e.g., operations and maintenance expense, depreciation expense, revenue-related tax expense, etc.) and the non-IOU's authorized rate of return. The commission observes that, for all of these items, the amounts from a non-IOU's last comprehensive rate case are not updated in an interim TCOS update; they are part of the transmission revenue requirement that the non-IOU reflects in its current rates and would *continue to reflect* after a commission order in an interim TCOS proceeding. Thus, for these components of a non-IOU's authorized revenue requirement, there should be no need for the non-IOU in its preparation of an interim TCOS update to incur costs for developing new information or, for that matter, for researching old information. This is true even for those non-IOUs whose rates have not changed in over 20 years. With regard to an interim TCOS update's most important item--the amount of rate base, which consists primarily of plant in service and other invested capital--the amount that a non-IOU reports for rate base in its yearly earnings report would be generally consistent with the amount it would seek in a rate proceeding, regardless of whether that proceeding was a comprehensive rate review or an interim TCOS update. Moreover, some information, even though not explicitly provided in the earnings-report form, can be derived from the reported data; for example, the rate of depreciation that a non-IOU applies to its transmission investments can be derived from other information in the earnings report.

Accordingly, the commission finds it reasonable to conclude that a substantial part of the work requirements--and therefore the related costs--for a non-IOU's interim TCOS update are not materially different or substantially greater incrementally than what the non-IOU is already bearing for the preparation of its annual earnings report, given that much of the required information is the same. The commission therefore does not find compelling certain parties' comments that requirements for the filing by non-IOUs of periodic interim TCOS updates would be definitively cost-prohibitive or cost-ineffective.

Nonetheless, in establishing a periodic filing schedule for non-IOUs, the commission agrees in principle with the majority of commenting parties that it is prudent to consider the size of a non-IOU's TCOS amount both on an absolute basis as well as relative to the statewide total, and to incorporate into the rule the necessary provisions to reflect such consideration. Commenting parties suggested a number of alternatives with regard to establishing an appropriate threshold below which smaller entities would have different filing requirements; generally, these alternatives rely on some comparison of the TCOS amount for a given provider relative to the total statewide TCOS amount, with the comparison expressed either in percentage terms or in dollar terms. As a general matter, the commission believes that a size threshold based on percentages is preferable to one based on nominal dollars, given that the relative amount of a dollar-based threshold could change materially over time as costs change in the ERCOT transmission grid.

Accordingly, consistent with the central recommendation made by the majority of the commenting parties, the commission in its adopted rule revises the requirements for ongoing, periodic rate-case filings by establishing a size threshold of one percent of the amount of total statewide transmission costs, as determined each year in the commission's transmission "matrix" proceeding that establishes transmission costs in ERCOT. The adopted rule language provides that, for non-IOUs above this threshold, the ongoing, periodic filing requirement is every 48 months, and for non-IOUs below this threshold, the filing requirement is every 96 months. This fundamental modification to the published rule incorporates a variation of Texas EC's recommended tier-based approach along with a threshold level recommended by Brownsville, and takes into account the concerns expressed by a majority of the commenting parties regarding the relative costs and benefits of rate proceedings by the smaller non-IOUs, while still establishing a definitive schedule for the commission's periodic review of the rates of each non-IOU in ERCOT.

With regard to the one-percent threshold, the commission concludes that such a level is a reasonable balance of a number of different considerations that take into account not only the effects of the size differences between non-IOUs and the amounts of each non-IOU's TCOS relative to the total amount of transmission costs in ERCOT, but also the related impact of the smaller non-IOUs' costs of filing a rate proceeding. For example, based on the most recent transmission matrix docket in which the commission established the total amount of ERCOT transmission

costs, only seven of the 38 non-IOUs currently exceed the one-percent threshold; viewed from another perspective, the 31 non-IOUs that do not individually meet the one-percent threshold constitute collectively a total of only about 3.2% of the total statewide TCOS. Hence, the commission finds that, for these smaller companies, a longer time period between required rate filings is a reasonable middle ground between the status quo (with no filing requirements at all) and a filing schedule with practical requirements reflecting the substantial size differences between the non-IOUs.

The commission additionally notes that Texas EC acknowledged in its comments that even small non-IOUs should have at least an initial update to their rates; related to this point, Texas EC went on to express its view that ongoing monitoring of the companies' earnings reports would be sufficient thereafter. The commission agrees with the first part of these comments by Texas EC--that the rule should require even small non-IOUs to file an initial update within a specified transition period; similarly, the commission agrees with TIEC's basic arguments that for the companies that have not had any kind of rate review in many years--in some cases, in over two decades--a requirement for an initial filing during a transition period is not only reasonable, it is prudent. With regard, however, to the second part of Texas EC's comments--that for time periods subsequent to the transition-period filings, the rule need not include a filing schedule for smaller non-IOUs because the commission can rely on annual earnings reports to assess filing needs--the commission finds that although for many years the earnings-report process has served its purpose well (and continues to serve its purpose well), the establishment of a periodic filing schedule can enhance the overall regulatory oversight of non-IOUs and provide to the commission an additional tool in ensuring just and reasonable rates. The commission thus concludes that a requirement for non-IOUs to make ongoing, periodic filings--albeit for small non-IOUs, on a less frequent basis than contemplated in the published rule--is reasonable and appropriate for purposes of ensuring that wholesale transmission rates in ERCOT are accurate and up to date.

In adopting the scheduling amendments to this rule, the commission notes its authority to require, at any time, a filing by a non-IOU for either an interim or comprehensive rate proceeding. To the extent that the commission deems a non-IOU's level of earnings as unacceptable or determines on the basis of other reasons that a non-IOU should file an application for a rate review, the commission in its discretion may order a filing by the non-IOU irrespective of this rule's scheduling requirements.

Comments related primarily to the issue of filing requirements during a transition period

LCRA TSC noted that, based on the length of time that has passed since the commission approved a non-IOU's rates, subsection (e) of the published rule establishes filing requirements for non-IOUs during a five-year transition period following passage of the rule, and LCRA TSC opined that the five-year period reasonably balances the impact of the rule changes on commission staff and utility resources.

Brazos expressed its belief that there are inconsistencies in the application of subsections (d) and (e) of the proposed rule. To illustrate its assertion, Brazos provided an example in which a non-IOU previously submitted a filing for a comprehensive update of its transmission rates and received its final order on October 1, 2015. Brazos pointed out that if the proposed rule amendments are approved by a commission order with an effective date of September 30, 2018, that non-IOU would be required to follow subsection (d)(1) for its initial filing under the proposed rule instead of subsection (e) because it had received its last commission order within 36 months of the effective date of the proposed rule, making subsection (e) not applicable. Brazos stated that, consequently, the non-IOU would be required to file an interim update on or before October 1, 2019 (the end of the 48-month period from the date of its prior commission order on October 1, 2015). Brazos commented that, in comparison, the rule application would lead to a different result if the proposed rule amendments are approved by a commission order with an effective date of October 2, 2018. Brazos stated that under this assumption, that same non-IOU would now be required to follow subsection (e) for its initial filing instead of subsection (d)(1) because the non-IOU had received its last commission order more than 36 months prior to the effective date of the rule and, as a result, the non-IOU would not be required to file its interim update required under the proposed rule until on or before October 2, 2023. Brazos commented that, as this illustration demonstrates, a two-day difference in the issuance of a commission order making the proposed rule amendments effective can result in a four-year difference in the requirement for when a non-IOU must make an interim TCOS rate filing. Brazos stated its belief that the commission does not intend for such an inconsistent and illogical result, and provided alternative rule language reflecting its comments. Brownsville stated that it does not oppose the suggestions proposed by Brazos.

Texas EC, Brazos, TPPA, and TIEC commented that a non-IOU should have the ability to choose whether to file a full TCOS case or an interim update to maintain compliance with the scheduling requirements. Texas EC stated that, as written, the published rule restricts the non-IOU to filing only interim updates, and that filing a full TCOS case would not seem to satisfy the requirements of the published rule, even though a full TCOS case provides a thorough review.

OPUC expressed its concern that if a non-IOU has a choice of filing a comprehensive TCOS proceeding or an interim update, the non-IOU would select a comprehensive filing only if it believed that an increase in its commission-approved TCOS would result from the filing. OPUC recommended that if the commission determines that non-IOUs should have the option of filing either an interim update or a comprehensive TCOS on the scheduled date, then the commission should amend the schedule to require periodic comprehensive TCOS proceedings as well, such as after every second interim update, not unlike requirements in other commission rules, such as the rule pertaining to the establishment of a distribution cost recovery factor (DCRF). OPUC stated that requiring a comprehensive TCOS filing is consistent with the commission's stated goal of ensuring that rates being charged by these non-IOUs in ERCOT are reasonable and appropriate, and that interim update filings under the commission's rules are truncated proceedings that only review certain portions of the transmission cost of service and, by design, do not address the reasonableness or necessity of an investment or any load growth that occurred. OPUC stated that including periodic comprehensive TCOS filings in the required schedule, at least for larger non-IOUs, would provide a means for addressing these issues.

TIEC stated that the commission should shorten the transition periods in subsection (e) of the published rule, which, as proposed, would unnecessarily delay the benefits of the rule and allow many non-IOUs to continue collecting unjust and unreasonable rates based on outdated revenue requirements. TIEC stated that, in many cases, these stale revenue requirements

do not account for years or even decades of depreciation, and that given the ministerial nature of TCOS update filings, there is no justification for including transition periods that would significantly extend the time that the non-IOUs are allowed to charge their current rates. TIEC provided an example that assumed if this rule goes into effect at the end of this year, a non-IOU that resolved its last TCOS filing in January of 2013 would have until the end of 2023, or a ten-year gap, before it is required to make its first TCOS filing under this rule; even worse, a non-IOU that resolved its last TCOS case in April of 2011 would have until the end of 2022, or nearly eleven years between filings, and a non-IOU that resolved its last case in January of 2006 would have until the end of 2021, or 16 years. TIEC asserted that, given the amount of time that these entities have already gone without updating their TCOS rates, these transition periods are too long and should be shortened.

TIEC submitted that the commission should simplify and reduce the proposed transition period by: (1) requiring all non-IOUs that last received a commission order in a rate proceeding under 16 TAC §25.192 before January 1, 2009, to make an interim TCOS filing within one year of the effective date of this rule; and (2) requiring all other non-IOUs to file an interim update within two years of the effective date of the rule.

LCRA TSC commented that TIEC's recommended change in the transition period from 48 to 24 months could initially result in more than 35 non-IOU rate proceedings being processed within a two-year period (at the same time when another six IOU comprehensive rate proceedings would also be processed); additionally, other rate applications might be filed voluntarily, outside of the schedules implemented by the rule, by both IOUs and non-IOUs during the same period. LCRA TSC stated that TIEC's suggested two-year transition period and 24-month filing frequency thereafter both appear to disregard the demands that will be placed on commission and market participant resources, without any concomitant advancement of the goals the commission has identified to be achieved through this rulemaking project. LCRA TSC commented that such a burden on commission and market participant resources is unreasonable and unnecessary, and that the commission should reject TIEC's recommendation.

Commission Response

The commission agrees with TIEC that, under the provisions of the published rule, the transition periods for some of the non-IOUs are too long and should be shortened. Allowing for time periods of up to 16 years between rate orders for a non-IOU perpetuates issues related to outdated revenue requirements and is contrary to the basic objectives of the rule. Thus, consistent with TIEC's recommendations, the commission adopts modifications to the filing schedule during the transition period by requiring non-IOUs to make their initial filings over a two-year period rather than the published rule's five-year period. Additionally, the adopted language specifies that subsection (e) of the rule does not apply to non-IOUs for which the commission has issued orders for changes to transmission rates subsequent to January 1, 2017, or to non-IOUs with rate proceedings pending at the time the rule becomes effective. For these companies, the next TCOS filing will be either 48 months or 96 months from the last change in transmission rates, depending upon the size of the non-IOU. These provisions reduce the number of non-IOUs required to make filings in the 24-month transition period by approximately one third--a result that addresses LCRA TSC's concerns regarding the possibility of more than 35 non-IOU rate proceedings in a two-year period. Further regarding these concerns as expressed by LCRA TSC, the commission notes that, given the comparatively small size of many of the non-IOUs, the processing of these transition period filings should not unduly affect commission and stakeholder resources.

The commission also modifies the rule language to address the timing concerns expressed by Brazos with regard to possible "inconsistencies" in the application of the rule. The adopted rule language clarifies that the ongoing, periodic filing requirement of 48 months or 96 months under subsection (d) applies after a non-IOU makes its initial transition-period filing as required by the provisions of subsection (e). The commission's modifications in the adopted rule resolve the potential problems voiced by Brazos by ensuring that the filing requirements during the transition period are addressed before the ongoing, periodic filing requirements begin.

With regard to the ongoing filing requirement, the commission agrees with parties' comments that the rule should allow a non-IOU to choose whether to file a comprehensive TCOS proceeding or an interim update, and the commission in its adoption of the rule accordingly modifies the relevant language. The commission declines, however, to revise the rule to require periodic comprehensive filings as OPUC suggested. The commission's published rule did not propose a requirement for comprehensive rate-case filings, and the commission in its adopted rule again declines to include such a requirement. OPUC cited other commission rules such as the DCRF rule that apply to investor-owned utilities and require periodic comprehensive rate proceedings after a given number of filings to recover specific types of cost (such as investments for distribution infrastructure). The commission notes, however, that the scale of costs involved in such IOU rate proceedings is far larger than in the majority of non-IOU rate proceedings, and for the comparatively small number of non-IOUs that have amounts of infrastructure investment comparable to those of IOUs, the commission concludes that earnings-report reviews, as the commission discussed previously, can address the need for rate-case filings more efficiently than a rule that would require periodic comprehensive TCOS filings by all non-IOUs.

In this rulemaking the commission fully considered all comments submitted on record in the project, including any not specifically referenced herein. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amended section is adopted under Public Utility Regulatory Act, Tex. Util. Code Ann. §14.001 (West 2007 and Supp. 2018) (PURA), which grants the commission authority to regulate and supervise the business of each public utility within its jurisdiction including those powers specifically designated or implied that are necessary and convenient to exercise such authority, PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §35.004, which requires the commission to price wholesale transmission services within ERCOT based on the postage stamp method and further grants the commission authority to approve wholesale transmission rates, including those of non-investor-owned electric utilities.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002 and 35.004.

§25.247. Rate Review Schedule.

(a) Application. This section applies to investor-owned electric utilities and non-investor-owned transmission service providers operating inside the Electric Reliability Council of Texas (ERCOT).

(b) Filing requirements for investor-owned electric utilities.

(1) Each investor-owned electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case. For an investor-owned transmission and distribution utility, the filing must include information necessary for the review of both transmission and distribution rates.

(2) On a year-to-year basis, the commission shall issue an order extending the filing requirements under paragraph (1) of this subsection by one year if the following conditions are met:

(A) for an investor-owned electric utility providing transmission-only service, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission-only utility operating in ERCOT; or

(B) for an investor-owned transmission and distribution utility, the utility's most recent earnings monitoring report, as of 180 days before its scheduled filing date established by this section, filed in compliance with commission rules and instructions or as adjusted by the commission to conform with the rules and instructions, shows that it is earning, on a weather-normalized basis using weather data for the most recent ten calendar years, less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each investor-owned transmission and distribution utility operating in ERCOT with at least 175,000 metered customers.

(3) The commission may extend the scheduled filing deadline under paragraphs (1) and (2) of this subsection for good cause shown or because of resource constraints of the commission.

(4) An investor-owned electric utility qualifying for an extension under paragraph (2) of this subsection shall submit notice in the same project as the filing of its most recent earnings monitoring report at least 180 days before the fourth anniversary of the order in its most recent comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case.

(5) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in an investor-owned electric utility's earnings monitoring report.

(c) Transition issues for investor-owned electric utilities.

(1) If an investor-owned electric utility has a comprehensive rate proceeding pending on the effective date of this rule, the electric utility is required to file, after the commission's final order in that pending proceeding, a comprehensive rate proceeding in accordance with subsection (b) of this section. If the pending proceeding is withdrawn, dismissed, or otherwise resolved without a final order, the investor-owned electric utility shall be subject to the transition timelines in paragraph (2) of this subsection unless the commission orders otherwise.

(2) All investor-owned electric utilities shall make their initial filings under subsection (b) of this section on or before the later of:

(A) 48 months from the order in the investor-owned electric utility's last comprehensive rate proceeding or other proceeding in which the commission approved a settlement agreement reflecting a rate modification that allowed the electric utility to avoid the filing of such a rate case; or

(B) the following dates:

Figure: 16 TAC §25.247(c)(2)(B) (No change.)

(d) Filing requirements for non-investor-owned transmission service providers.

(1) After complying with applicable provisions under subsection (e) of this section, and on an ongoing basis thereafter, each non-investor-owned transmission service provider is required to submit a complete application for either a comprehensive transmission cost of service review under §25.192(g) of this title (relating to Transmission Service Rates) or an interim update under §25.192(h) of this title within:

(A) 48 months of the date of the provider's order for its most recently approved change in transmission service rates under §25.192 of this title if the provider's approved wholesale transmission service revenue requirement is equal to or greater than one percent of the amount of the total ERCOT wholesale transmission charges determined by the commission in the most recent annual update, as of the date of the provider's order, of the ERCOT four coincident peak (4CP) demand in accordance with §25.192(b) of this title; or

(B) 96 months of the date of the provider's order for its most recently approved change in transmission service rates under §25.192 of this title if the provider's approved wholesale transmission service revenue requirement is less than one percent of the amount of the total ERCOT wholesale transmission charges determined by the commission in the most recent annual update, as of the date of the provider's order, of the ERCOT four coincident peak (4CP) demand in accordance with §25.192(b) of this title.

(2) Nothing in this section limits the commission's authority to initiate a rate proceeding at any time under this title on the basis of other criteria that the commission determines are in the public interest, including but not limited to the information provided in a non-investor-owned transmission service provider's earnings monitoring report.

(e) Transition period for filings by non-investor-owned transmission service providers. As of the effective date of this subsection, for a non-investor-owned transmission service provider that has not since January 1, 2017, had a commission-approved change to its transmission service rates under §25.192 of this title or does not have a rate proceeding pending under §25.192 of this title, the following deadlines apply for submitting a complete application for either a comprehensive transmission cost of service review under §25.192(g) of this title or a complete application for an interim update under §25.192(h) of this title:

Figure: 16 TAC §25.247(e)

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 November 8, 2018.

TRD-201804839
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 28, 2018
Proposal publication date: July 13, 2018
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER O. LEARNING TECHNOLOGY ADVISORY COMMITTEE

19 TAC §1.185, §1.187

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Chapter 1, Subchapter O, §1.185 and §1.187 concerning the authority and specific purposes of the Learning Technology Committee and committee membership and officers without changes to proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4938). The amendments correct the reference of statutory authority in §1.185 and a grammatical error in §1.187

There were no comments received concerning the amendments to these sections.

The amendments are adopted under the Texas Government Code, Chapter 2110, §2110.0012, which provides state agencies the authority to establish advisory committees.

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 November 6, 2018.

TRD-201804790
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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CHAPTER 27. FIELDS OF STUDY
SUBCHAPTER DD. COMMUNICATION DISORDERS SCIENCES AND SERVICES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.681 - 27.687

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Chapter 27, Subchapter DD, §§27.681 - 27.687, concerning the establishment of the Communication Disorders Sciences and Services Field of Study Advisory Committee without changes to proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4939). The new sections authorize the Board to create an advisory committee to develop a Communication Disorders Sciences and Services Field of Study. The newly added sections will affect students when the Communication Disorders Sciences and Services Field of Study is adopted by the Board.

There were no comments received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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 November 6, 2018.

TRD-201804791
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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SUBCHAPTER EE. FINE AND STUDIO ARTS FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.701 - 27.707

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Chapter 27, Subchapter EE, §§27.701 - 27.707, concerning the establishment of the Fine and Studio Arts Field of Study Advisory Committee, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4940). The new sections authorize the Board to create an advisory committee to develop a Fine and Studio Arts Field of Study. The newly added sections will affect students when the Fine and Studio Arts Field of Study is adopted by the Board.

There were no comments received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the com-

mittee and describe the manner in which the committee will report to the agency.

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 November 6, 2018.

TRD-201804795
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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SUBCHAPTER FF. JOURNALISM FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.721 - 27.727

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Chapter 27, Subchapter FF, §§27.721 - 27.727, concerning the establishment of the Journalism Field of Study Advisory Committee, without changes to the proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4941). The new sections authorize the Board to create an advisory committee to develop a Journalism Field of Study. The newly added sections will affect students when the Journalism Field of Study is adopted by the Board.

There were no comments received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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 November 6, 2018.

TRD-201804796
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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SUBCHAPTER GG. ANIMAL SCIENCES FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.741 - 27.747

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Chapter 27, Subchapter GG, §§27.741 - 27.747, concerning the establishment of the Animal Sciences Field of Study Advisory Committee without changes to proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4942). The new sections authorize the Board to create an advisory committee to develop an Animal Sciences Field of Study. The newly added sections will affect students when the Animal Sciences Field of Study is adopted by the Board.

There were no comments received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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 November 6, 2018.

TRD-201804797
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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SUBCHAPTER HH. AGRICULTURAL BUSINESS AND MANAGEMENT FIELD OF STUDY ADVISORY COMMITTEE

19 TAC §§27.761 - 27.767

The Texas Higher Education Coordinating Board adopts new Chapter 27, Subchapter HH, §§27.761 - 27.767, concerning the establishment of the Agricultural Business and Management Field of Study Advisory Committee without changes to proposed text as published in the July 27, 2018, issue of the *Texas Register* (43 TexReg 4944). The new sections authorize the Board to create an advisory committee to develop an Agricultural Business and Management Field of Study. The newly added sections will affect students when the Agricultural Business and Management Field of Study is adopted by the Board.

There were no comments received concerning these new sections.

The new sections are adopted under the Texas Education Code, §61.823(a), which provides the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory com-

mittee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

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 November 6, 2018.

TRD-201804798
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 26, 2018
Proposal publication date: July 27, 2018
For further information, please call: (512) 427-6104

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 74. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §74.1, §74.2

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §74.1, concerning Definitions, and §74.2, concerning Registration of Chiropractic Radiologic Technologists. The repeal of these sections is adopted without changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6172) and will not be republished.

The purpose of repealing these two rules is to bring the Board's rules in compliance with Senate Bill (SB) 674 (85th Legislature, Regular Session). SB 674 amended Texas Occupations Code §601.252(c) and (d) to eliminate the requirement that radiologic technologists licensed by the Texas Medical Board who perform procedures under the delegation of licensed chiropractors must also register with the Board. Therefore, 22 TAC §74.1 and §74.2, which define the procedures for radiologic technologists to register with the Board, are no longer necessary.

No comments were received regarding the repeal of these two sections.

This repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or rule is affected by this repeal.

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 November 8, 2018.

TRD-201804831
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 28, 2018
Proposal publication date: September 21, 2018
For further information, please call: (512) 305-6700

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CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) adopts amended 22 TAC §75.1, relating to Notification and Change of Address. The amended section is adopted without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5745) and will not be republished.

The amendments to §75.1 clarify the forms of contact information a licensee is to provide to the Board, and to make the deadlines uniform for a licensee submitting changes to that contact information.

No comments were received regarding adoption of the amendment.

The amended section is adopted under Occupations Code §201.152, which authorizes the Board to adopt rules to perform its duties and regulate the practice of chiropractic.

No other statute, article, or code is affected by the adoption.

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 November 8, 2018.

TRD-201804834
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 28, 2018
Proposal publication date: September 7, 2018
For further information, please call: (512) 305-6700

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CHAPTER 77. PROFESSIONAL CONDUCT

22 TAC §§77.13 - 77.17

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §77.13 (Bribery), §77.14 (Coercion of Public Servant or Voter), §77.15 (Improper Influence), §77.16 (Tampering With a Witness), and §77.17 (Obstruction or Retaliation). The repeal of these sections is adopted without changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6173) and will not be republished.

The purpose of repealing these five rules is to eliminate unnecessary and superfluous provisions in the Board's rules. These rules are unnecessary because they are simply restatements of criminal offenses contained in Texas Penal Code §§36.02, 36.03, 36.04, 36.05, and 36.06. The Board already has the authority under Texas Occupations Code §201.501 and §201.502(c) to

consider violations of those Penal Code statutes in making determinations to revoke or suspend a licensed chiropractor or to refuse an individual's request to be admitted to an examination.

No comments were received regarding the repeal of these five sections.

The repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

The adopted repeal does not affect any other statutes or rules.

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 November 8, 2018.

TRD-201804833
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: November 28, 2018
Proposal publication date: September 21, 2018
For further information, please call: (512) 305-6700

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

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §91.501, (Director Eligibility and Disqualification), §91.502 (Director/Committee Member Fees, Insurance Reimbursable Expenses, and Other Authorized Expenditures), §91.503 (Change in Credit Union President), §91.510 (Bond and Insurance Requirements, §91.515 (Financial Reporting), §91.516 (Audits and Verifications), §91.601 (Share and Deposit Accounts), §91.602 (Solicitation and Acceptance of Brokered Deposits), §91.608 (Confidentiality of Member Records), and §91.610 (Safe Deposit Box Facilities).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in this chapter continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

- Does the rule organize the material to suit your needs? If not, how could the material be better organized?

- Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

- Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

- Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to cudmail@cud.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201804830
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 8, 2018

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 150 are organized under the following subchapters: Subchapter AA, Teacher Appraisal; Subchapter BB, Administrator Appraisal; and Subchapter CC, Superintendent Appraisal.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 150, Subchapters AA-CC, continue to exist.

The public comment period on the review of 19 TAC Chapter 150, Subchapters AA-CC, begins November 23, 2018, and ends December 27, 2018. A form for submitting public comments on proposed rule reviews is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/. Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201804887
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 14, 2018

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 153 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits; Subchapter BB, Commissioner's Rules Con-

cerning Professional Development; Subchapter CC, Commissioner's Rules on Creditable Years of Service; and Subchapter DD, Criminal History Record Information Review.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 153, Subchapters AA-DD, continue to exist.

The public comment period on the review of 19 TAC Chapter 153, Subchapters AA-DD, begins November 23, 2018, and ends December 27, 2018. A form for submitting public comments on proposed rule reviews is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/. Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201804888
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 14, 2018

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 10, Commission Meetings.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 10 continue to exist.

Comments regarding suggested changes to the rules in Chapter 10 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 10. Written comments may be submitted to Paige Bond, 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 Non-Rule Project Number 2018-039-010-AD. Comments must be received by December 28, 2018. For further information, please contact Brad Patterson, Office of the Chief Clerk, at (512) 239-1201.

TRD-201804868
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 13, 2018

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 106, Permits by Rule.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 106 continue to exist.

Comments regarding suggested changes to the rules in Chapter 106 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 106. 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 Non-Rule Project Number 2018-047-106-AI. Comments must be received by January 10, 2019. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

TRD-201804876
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 13, 2018

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 205, General Permits for Waste Discharges.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 205 continue to exist.

Comments regarding suggested changes to the rules in Chapter 205 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 205. Written comments may be submitted to Paige Bond, 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 Non-Rule Project Number 2018-051-205-OW. Comments must be received by January 4, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201804866

Robert Martinez
Director, Environmental Law
Texas Commission on Environmental Quality
Filed: November 13, 2018

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter AA, Commissioner's Rules on College and Career Readiness; and Subchapter BB, Commissioner's Rules Concerning High School Graduation, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 74, Subchapters AA and BB, in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5527).

Relating to the review of 19 TAC Chapter 74, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter AA. At a later date, the TEA plans to propose an amendment to §74.1001, College Readiness Vertical Team, to update cross references to statute.

Relating to the review of 19 TAC Chapter 74, Subchapter BB, the TEA finds that the reasons for adopting §§74.1025, 74.1027, and 74.1030 continue to exist and readopts the rules. The TEA finds that the reasons do not exist for adopting §74.1021 and §74.1022. The TEA received no comments related to the review of Subchapter BB. At a later date, the TEA plans to propose the repeal of §74.1021 and §74.1022.

This concludes the review of 19 TAC Chapter 74.

TRD-201804841
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 9, 2018

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed its review of Title 13, Chapter 9 concerning the Talking Book Program. The Commission proposes to readopt these rules in accordance with Texas Government Code §2001.039.

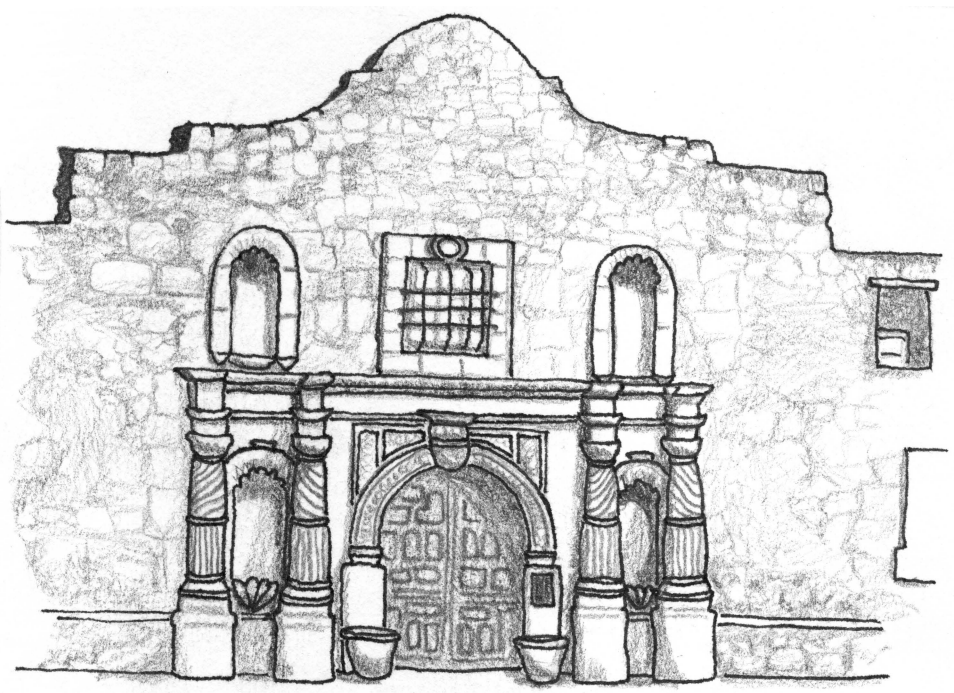
The rules were reviewed in accordance with Texas Government Code section 2001.039 which requires state agencies to review their rules every four years.

Notice of the review was published in the *Texas Register* on July 27, 2018 (43 TexReg 4995). No comments were received on the notice of intention to review.

As a result of the internal review of the rules, the Commission has determined that the reasons for initially adopting the rules continue to exist but that certain amendments are appropriate and necessary. These amendments were published in the proposed rulemaking section of the *Texas Register* on September 21, 2018 (43 TexReg 6169). This concludes the review of Title 13, Chapter 9.

TRD-201804821
Ava Smith
Director
Texas State Library and Archives Commission
Filed: November 8, 2018

♦ ♦ ♦



Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.247(e)

Date of Commission Order in Non-Investor-Owned Transmission Service Provider's Last Rate Change under §25.192	**Filing Deadline for Rate Proceeding under §25.192**
Prior to January 1, 2009	One year after effective date of this rule
January 1, 2009 to January 1, 2017	Two years after effective date of this rule

Figure: 37 TAC §439.19(b)

Examination	Section	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
Basic Structure FP	Hazardous Materials Awareness	25		
	Hazardous Materials Operations	25		
	Firefighter I	100		
	Firefighter II	75		
	TOTAL	225	25	4.5 Hours
Basic Fire Inspector	Inspector I	50		
	Inspector II	50		
	TOTAL	100	15	2.0 Hours
Basic Structure FP/ Intermediate Wildland FP	Hazardous Materials Awareness	25		
	Hazardous Materials Operations	25		
	Firefighter I	100		
	Firefighter II	75		
	Intermediate Wildland FP	25		
	TOTAL	250	25	5.0 Hours
FOR ALL OTHER EXAMINATIONS, SECTIONAL EXAMINATIONS, AND RETESTS				
	Recommended Hours	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
IF THE RECOMMENDED HOURS FOR THE CURRICULUM OR SECTION IS:	Less than 30	25	5	30 Minutes
	31 to 100	50	5	1.0 Hour
	101 to 200	75	10	1.5 Hours
	201 to 300	100	15	2.0 Hours
	301 to 400	125	20	2.5 Hours
	401 or More	150	25	3.0 Hours

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

Request for Proposal - New Braunfels Transit Study Update

The Alamo Area Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the New Braunfels Transit Study.

A copy of the Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from the MPO's website at www.alamoareampo.org or calling Jeanne Geiger, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CT), Friday, December 14, 2018, at the MPO office to:

Isidro "Sid" Martinez

Director

Alamo Area MPO

825 S. St. Mary's Street

San Antonio, Texas 78205

Funding for this study, in the amount of $250,000, is contingent upon the availability of Federal transportation planning funds.

TRD-201804891
Jeanne Geiger
Deputy Director
Alamo Area Metropolitan Planning Organization
Filed: November 14, 2018

♦ ♦ ♦

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Travis County, Texas and the State of Texas v. Proof & Cooper, LLC and Double Barrel Holdings, LLC,* Cause No. D-1-GN-16-002360, 53rd Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: Defendants Proof & Cooper, LLC and Double Barrel Holdings, LLC ("Defendants") own and operate a restaurant named Proof & Cooper, located at 18800 Hamilton Pool Road, in Travis County. The restaurant is connected to an on-site sewage facility that is licensed and built for non-residential low water use for the convenience store, allowing for takeout food and using less than 360 gallons per day. The restaurant's current operations exceed the capacity of the sewage facility. In February 2015, Travis County notified Defendants that the sewage facility was not licensed for restaurant use. In December 2015 and March 2016, Travis County investigators observed sewage discharging from the restaurant's sewage facility onto neighboring property. Since this suit was filed, Defendants have agreed to install a new sewage facility that can adequately meet the demands of the restaurant. The Judgment includes an injunction setting forth specific requirements Defendants must meet regarding the installation and operation of the new sewage facility.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders Defendants Proof & Cooper, LLC and Double Barrel Holdings, LLC, to pay civil penalties of $23,000 to be divided equally between Travis County and the State of Texas. Of the $23,000 civil penalties, $10,500 must be paid within 30 days of the date of signing the Judgment, and $12,500 will be deferred upon Defendants' full compliance with the injunction. Defendants will pay $1,000 in attorney's fees to the State of Texas and $1,000 in attorney's fees to Travis County.

For a complete description of the proposed settlement, the proposed Judgment should be reviewed in its entirety. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201804900
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 14, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/19/18 - 11/25/18 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 11/19/18 - 11/25/18 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201804882
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 13, 2018

Court of Criminal Appeals

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-021

ORDER AMENDING TEXAS RULE OF APPELLATE PROCEDURE 25.2

ORDERED that:

1. On April 9, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Order 18-007 proposing amendments to Rule of Appellate Procedure 25.2 and invited public comments. The public comment period has expired.

2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.

3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rule of Appellate Procedure 25.2(a). The amendments will take effect on December 1, 2018.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

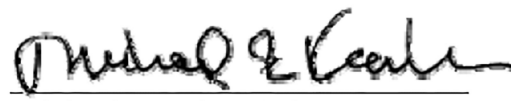
   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

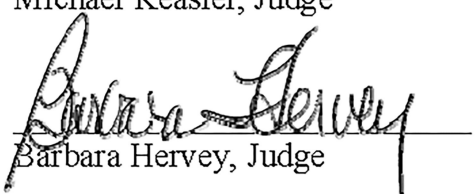
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 30, 2018.

Sharon Keller, Presiding Judge



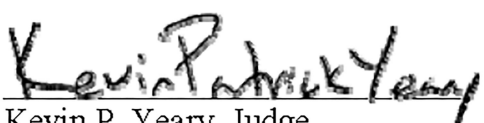
Michael Keasler, Judge



Barbara Hervey, Judge

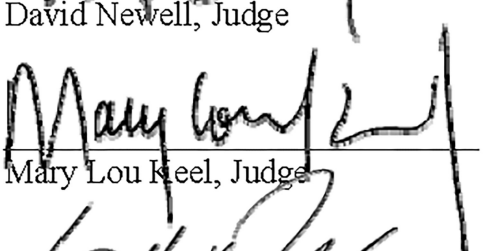
Elsa Alcala, Judge

Bert Richardson, Judge



Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge

Scott Walker, Judge

25.2. Criminal Cases

(a) *Rights to Appeal.*

(1) Of the State. The State is entitled to appeal a court's order in a criminal case as provided by Code of Criminal Procedure article 44.01.

(2) Of the Defendant. A defendant in a criminal case has the right of appeal under Code of Criminal Procedure article 44.02 and these rules. The trial court shall enter a certification of the defendant's right of appeal each time it enters a judgment of guilt or other appealable order other than an order appealable under Code of Criminal Procedure Chapter 64. In a plea bargain case – that is, a case in which a defendant's plea was guilty or nolo contendere and the punishment did not exceed the punishment recommended by the prosecutor and agreed to by the defendant – a defendant may appeal only:

(A) those matters that were raised by written motion filed and ruled on before trial,

(B) after getting the trial court's permission to appeal, or

(C) where the specific appeal is expressly authorized by statute.

TRD-201804812

Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 2018

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-022

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 73.1 AND 73.4

ORDERED that:

1. On April 9 and September 10, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Orders 18-006 and 18-017 proposing amendments to Rules of Appellate Procedure 73.1 and 73.4 and invited public comments. The public comment periods have expired.

2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.

3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 73.1 and 73.4. The amendments will take effect on December 1, 2018.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

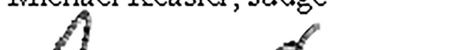
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 30, 2018.

Sharon Keller, Presiding Judge

Michael Keasler, Judge



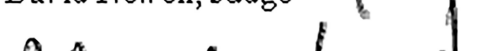
Barbara Hervey, Judge

Elsa Alcala, Judge

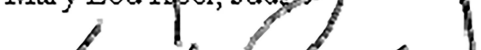
Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

Rule 73 Postconviction Applications for Writs of Habeas Corpus

73.1. Form for Application Filed Under Article 11.07 of the Code of Criminal Procedure

* * *

(g) *Verification*. The application must be verified by either:

(1) oath made before a notary public or other officer authorized to administer oaths; or

(2) an unsworn declaration in substantially the form required by Civil Practice and Remedies Code chapter 132 as set out in the verification section of the application form.

* * *

73.4. Filing and Transmission of Habeas Record

* * *

(b) In addition to the duties set out in Article 11.07, the district clerk shall do the following:

* * *

(2) When any pleadings, objections, motions, affidavits, exhibits, proposed or entered findings of fact and conclusions of law, or other orders are filed or made a part of the record, the district clerk shall immediately send a copy to all parties in the case. A party has ten days from the date he receives the trial court's findings of fact and conclusions of law to file objections, but the trial court may, nevertheless, order the district clerk to transmit the record to the Court of Criminal Appeals before the expiration of the ten days. Upon transmission of the record, the district clerk shall immediately notify all parties in the case.

(3) When a district clerk transmits the record in a postconviction application for a writ of habeas corpus under Code of Criminal Procedure articles 11.07 or 11.071, the district clerk must prepare and transmit a summary sheet that includes the following information:

(A) the convicting court's name and county, and the name of the judge who tried the case;

(B) the applicant's name, the offense, the plea, the cause number, the sentence, and the date of sentence, as shown in the judgment of conviction;

(C) the cause number of any appeal from the conviction and the citation to any published report;

(D) whether a hearing was held on the application, whether findings of fact were made, any recommendation of the convicting court, and the name of the judge who presided over the application;

(E) the name of counsel if applicant is represented; and

(F) the following certification:

I certify that all applicable requirements of Texas Rule of Appellate Procedure 73.4 have been complied with in this habeas proceeding, including the requirement to serve on all the parties in the case any objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case.

_____ _____

Signature of District Clerk or Clerk's Representative Date Signed

* * *

Comment to 2018 change: Rules 73.1 and 73.4 are amended in conjunction with amendments to the form for applications filed under Article 11.07 of the Code of Criminal Procedure (Appendix E to these rules) and the Clerk's Summary Sheet (Appendix F to these rules). The amendments clarify terminology and procedures for filing Article 11.07 writ applications and update the Article 11.07 writ application form to incorporate current technologies and filing procedures. The application form will be made available on the internet through the Court of Criminal Appeals' website. In addition, the amendments bring the application and filing procedures into conformity with Civil Practice and Remedies Code chapter 132, which permits both inmates and non-inmates to file unsworn declarations in lieu of notarized oaths. Further, the rules amendments and changes to the clerk's summary sheet clarify the information that district clerks must provide to the Court of Criminal Appeals and add a new requirement that clerks certify that they have complied with all the requirements of Rule 73.4, including the requirement to serve on all parties in the case all objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case. The phrase "all parties in the case" as used in Rule 73.4 includes: the attorney representing the State; the applicant (including pro se and inmate applicants); and, if the applicant is represented by counsel, applicant's attorney.

TRD-201804813

Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 2018

♦ ♦ ♦

In the Court of Criminal Appeals of Texas

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the November 23, 2018, issue of the Texas Register.)

TRD-201804814
Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 2018

♦ ♦ ♦

In the Court of Criminal Appeals of Texas

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-024

ORDER AMENDING APPENDIX D OF THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. On June 18, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Order 18-014 proposing amendments to Appendix D of the Rules of Appellate Procedure and invited public comments. The public comment period has expired.

2. The Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.

3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Appendix D of the Rules of Appellate Procedure. The amendments will take effect on December 1, 2018.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

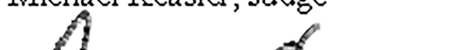
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 30, 2018.

Sharon Keller, Presiding Judge

Michael Keasler, Judge



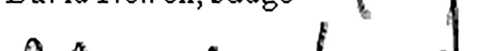
Barbara Hervey, Judge

Elsa Alcala, Judge

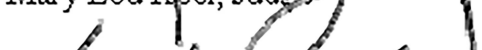
Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

APPENDIX D

Certification of Defendant's Right of Appeal

No. _____

The State of Texas

v.

_____

Defendant

In the _____ Court

of

_____ County, Texas

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL*

I certify that this criminal case:

☐ is not a plea-bargain case, and the defendant has the right of appeal;

☐ is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial and not withdrawn or waived, and the defendant has the right of appeal;

☐ is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal;

☐ is a plea-bargain case, and the defendant has NO right of appeal;

☐ the defendant has waived the right of appeal.

_____ Judge

_____ Date Signed

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals' judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 68.2, 68.3. I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

_____
Defendant

Mailing address: _____

_____
Telephone number: _____
Email Address (if any): _____

_____
Defendant's Counsel
State Bar of Texas ID number:_____
Mailing address:_____

_____
Telephone number:_____
Email Address: _____

* *See* TEX. R. APP. P. 25.2(a)(2).

TRD-201804815
Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 2018

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-025

ORDER AMENDING APPENDIX F OF THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. On June 18, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Order 18-015 proposing amendments to Appendix F of the Rules of Appellate Procedure and invited public comments. The public comment period has expired.

2. The Court has reviewed any comments. This order incorporates all revisions and contains the final version of these rule amendments.

3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Appendix F of the Rules of Appellate Procedure. The amendments will take effect on December 1, 2018.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

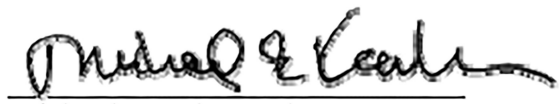
   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

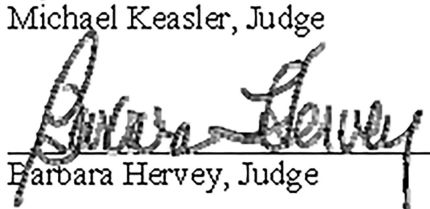
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 30, 2018.

Sharon Keller, Presiding Judge

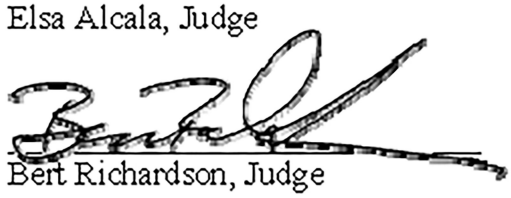


Michael Keasler, Judge

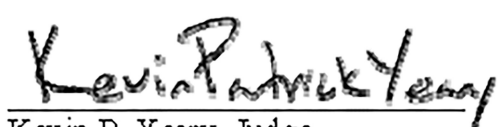


Barbara Hervey, Judge

Elsa Alcala, Judge

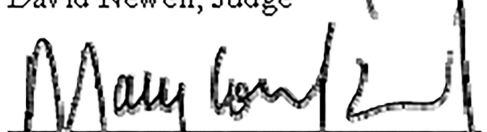


Bert Richardson, Judge

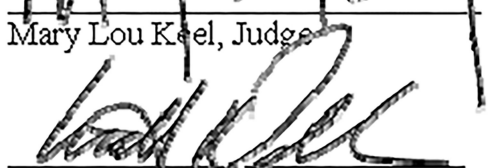


Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

APPENDIX F
IN THE COURT OF CRIMINAL APPEALS OF TEXAS
CLERK'S SUMMARY SHEET FOR
POSTCONVICTION APPLICATIONS FOR WRIT OF HABEAS CORPUS
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLES 11.07 AND 11.071

Application for Writ of Habeas Corpus

Ex Parte_____ from_____County
(*Name of Applicant*)

_____Court

TRIAL COURT WRIT NO._____

APPLICANT'S NAME (*As reflected in judgment*):_____

OFFENSE (*As reflected in judgment*):_____

CAUSE NO. (*As reflected in judgment*):_____

PLEA: _____GUILTY_____NOT GUILTY

SENTENCE:_____DATE:_____
(*Terms of years reflected in judgment*)

TRIAL DATE:_____

TRIAL JUDGE'S NAME (*Judge presiding at trial*):_____

APPEAL NO. (*If applicable*):_____

CITATION TO OPINION (*If applicable*): _____S.W.3d_____

HEARING HELD: _____YES_____NO
(*Pertaining to the application for writ of habeas corpus*)

FINDINGS & CONCLUSIONS ENTERED BY HABEAS JUDGE: ____YES____NO
(*Pertaining to the application for writ of habeas corpus*)

RECOMMENDATION: _____GRANT _____DENY _____DISMISS _____NONE
(*Habeas judge's recommendation regarding application for writ of habeas corpus*)

HABEAS JUDGE'S NAME: _____
(*Judge presiding over habeas corpus proceeding*)

NAME OF HABEAS COUNSEL IF APPLICANT IS REPRESENTED:_____

I certify that all applicable requirements of Texas Rule of Appellate Procedure 73.4 have been complied with in this habeas proceeding, including the requirement to serve on all the parties in the case any objections, motions, affidavits, exhibits, proposed findings of fact and conclusions of law, findings of fact and conclusions of law, and any other orders entered or pleadings filed in the habeas case.

_____ _____
Signature of District Clerk or Clerk's Representative Date Signed

TRD-201804816
Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 2018

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 18-026

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 31.1 AND 31.2

ORDERED that:

1. On June 18, 2018, the Court of Criminal Appeals signed Miscellaneous Docket Order 18-013 proposing amendments to Rules of Appellate Procedure 31.1 and 31.2 and invited public comments. The public comment period has expired.

2. This Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.

3. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals amends Rules of Appellate Procedure 31.1 and 31.2. The amendments will take effect on December 1, 2018.

4. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

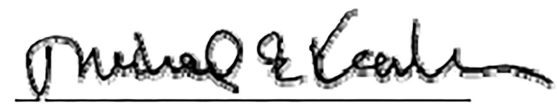
   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: October 30, 2018.

Sharon Keller, Presiding Judge

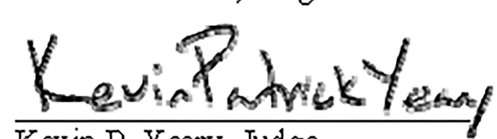


Michael Keasler, Judge

Barbara Hervey, Judge

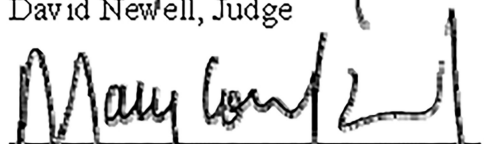
Elsa Alcala, Judge

Bert Richardson, Judge



Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge

Scott Walker, Judge

31.1. Filing the Record and Briefs

When written notice of appeal from a judgment or order in a habeas corpus or bail proceeding is filed, the trial court clerk must prepare and certify the clerk's record and, if the appellant requests, the court reporter must prepare and certify a reporter's record. The clerk must send the clerk's record and the court reporter must send the reporter's record to the appellate court within 15 days after the notice of appeal is filed. On reasonable explanation, the appellate court may shorten or extend the time to file the records.

(a) For an appeal from a habeas corpus proceeding challenging a conviction or an order placing the defendant on community supervision—but not challenging any particular condition of community supervision—the appellate court should use the same briefing rules, deadlines, and schedule that apply to direct appeals from criminal cases. On motion of any party, or on its own initiative, the appellate court may impose a more expedited timeline or submit the case without briefing, if necessary to do substantial justice to the parties.

(b) For an appeal from a bail proceeding or any other habeas corpus proceeding, including one that challenges a particular condition of community supervision, the court will—if it desires briefs—set the time for filing briefs.

31.2. Submission; Hearing

The applicant need not personally appear. The appellate court will not review any incidental question that might have arisen on the hearing of the application before the trial court. The sole purpose of the appeal is to do substantial justice to the parties.

(a) In an appeal from a habeas corpus proceeding challenging a conviction or an order placing the defendant on community supervision—but not challenging a particular condition of community supervision—the appellate court should use the same submission and hearing schedules that apply to direct appeals from criminal cases. On motion of any party, or on its own initiative, the appellate court may impose a more expedited timeline or submit the case without briefing, if necessary to do substantial justice to the parties.

(b) An appeal in any other habeas corpus or bail proceeding, including a challenge to a particular condition of community supervision, shall be submitted and heard at the earliest practicable time.

Deana Williamson
Clerk
Court of Criminal Appeals
Filed: November 8, 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 **December 27, 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 **December 27, 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: AMER & MILAD INVESTMENTS INCORPORATED dba Bruton Store; DOCKET NUMBER: 2017-1767-PST-E; IDENTIFIER: RN101550192; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $15,852; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2018-0875-PWS-E; IDENTIFIER: RN102680428; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency; 30 TAC §290.46(f)(2), (3)(B)(ix), and (D)(ii), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 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(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: $736; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Austin; DOCKET NUMBER: 2018-0550-EAQ-E; IDENTIFIER: RN104509120; LOCATION: Austin, Williamson County; TYPE OF FACILITY: four-lane divided arterial roadway with adjacent sidewalks, curb, and gutter; RULES VIOLATED: 30 TAC §213.4(k) and §213.5(b)(5)(A) and Water Pollution Abatement Plan Number 11-05011901, Standard Condition Number 14, by failing to maintain permanent best management practices after construction; PENALTY: $3,937; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,150; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Coleman; DOCKET NUMBER: 2018-1049-PWS-E; IDENTIFIER: RN102424645; LOCATION: Coleman, Coleman 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: $426; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Dilley; DOCKET NUMBER: 2017-0628-PWS-E; IDENTIFIER: RN101415941; LOCATION: Dilley, Frio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's Well Numbers 1, 2, and 4; 30 TAC §290.42(b)(2)(C), by failing to provide all processes involving exposure of the water to atmospheric contamination with subsequent disinfection of the water ahead of ground storage tanks and be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; 30 TAC §290.46(e)(4)(C), by failing to provide at least two operators who hold a Class C or higher groundwater license, and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities; 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist; 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(m)(1)(A), by failing to inspect each of the facility's ground and elevated storage tanks annually by water system personnel or a contracted inspection service; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 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)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the facility's wells; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $4,168; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,335; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Milford; DOCKET NUMBER: 2018-1205-MWD-E; IDENTIFIER: RN102080934; LOCATION: Milford, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and (j) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013937001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators holding the appropriate level of license to operate a wastewater treatment facility; and 30 TAC §305.125(1) and (11)(B) and §319.7(c) and TPDES Permit Number WQ0013937001, Monitoring and Reporting Requirements Number 3(b), by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative; PENALTY: $3,938; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Clarke Products, Incorporated; DOCKET NUMBER: 2018-0750-AIR-E; IDENTIFIER: RN104635032; LOCATION: Waco, Mclennan County; TYPE OF FACILITY: fiberglass reinforced plastic manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1060, 116.115(b)(2)(F) and (c), 116.116(a)(1), and 122.143(4), 40 Code of Federal Regulations §63.5805(c), New Source Review Permit Number 76122, Special Conditions Numbers 1, 4 (effective August 29, 2007), and 6 (effective June 21, 2017), Federal Operating Permit Number O2856, General Terms and Conditions and Special Terms and Conditions Numbers 4, 5 (effective May 17, 2011), and 6 (effective June 1, 2016), and Texas Health and Safety Code, §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in an application for a permit, and failing to comply with the maximum allowable emissions rates and emissions limit; PENALTY: $73,125; ENFORCEMENT COORDINATOR: Robyn Babyak, (512) 239-1853; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: DODGE ENTERPRISES, LLC dba Bubba's; DOCKET NUMBER: 2018-0930-PST-E; IDENTIFIER: RN104966536; LOCATION: Huntsville, Walker 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 30 days; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2018-1137-AIR-E; IDENTIFIER: RN101985653; LOCATION: Sour Lake, Hardin County; TYPE OF FACILITY: petrochemical storage and transfer site; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 4618, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Grand Prairie Landfill Gas Production, Limited Liability Company; DOCKET NUMBER: 2018-1211-AIR-E; IDENTIFIER: RN100542216; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: landfill gas to energy facility; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3773/General Operating Permit Number 517, Site-wide Requirements Number (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Gulf Coast Stabilized Materials LLC; DOCKET NUMBER: 2018-1006-AIR-E; IDENTIFIER: RN106643802; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: soil stabilization plant; RULES VIOLATED: 30 TAC §101.4 and §106.146(6), Permit by Rule Registration Number 75080L002, and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to sprinkle all stockpiles with water and/or chemicals as necessary to achieve maximum control of dust emissions; and 30 TAC §106.146(4), Permit by Rule Registration Number 75080L002, and THSC, §382.085(b), by failing to water, oil, or pave and clean all in-plant roads and work areas as necessary to achieve maximum control of dust emissions; PENALTY: $2,125; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 552-4054; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: INEOS NITRILES USA LLC; DOCKET NUMBER: 2018-0979-IWD-E; IDENTIFIER: RN100210038; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: organic chemical plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002181000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $42,400; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $21,200; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Johnny T. Arroyos dba Johnny Arroyos RV Park; DOCKET NUMBER: 2018-0878-PWS-E; IDENTIFIER: RN109759472; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to report the results of asbestos sampling to the

executive director (ED) for the January 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 30 micrograms per liter for uranium based on the running annual average; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the second, third, and fourth quarters of 2017; and 30 TAC §290.122(b)(2)(A) and (f), by failing to provide a public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for uranium during the fourth quarter of 2017; PENALTY: $905; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(14) COMPANY: Knife River Corporation - South; DOCKET NUMBER: 2018-1046-WQ-E; IDENTIFIER: RN106346083; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Oldcastle Materials Texas, Incorporated; DOCKET NUMBER: 2018-0870-AIR-E; IDENTIFIER: RN104992276; LOCATION: Frisco, Collin County; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent an odor nuisance; PENALTY: $3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $1,875; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2018-0889-MLM-E; IDENTIFIER: RN101265908; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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(i) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to water in the state; 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), by failing to create a nitrification action plan for all systems distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: $2,125; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Veterans of Foreign Wars of the United States dba Lake Texoma VFW Post 7873; DOCKET NUMBER: 2018-0189-PWS-E; IDENTIFIER: RN101273381; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2015 - December 31, 2015, January 1, 2016 - December 31, 2016, and January 1, 2017 - December 31, 2017, monitoring periods, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; 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 failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification had been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2014 - December 31, 2014, monitoring period; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2013, 2014, 2015, and 2016; PENALTY: $980; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Williamson County; DOCKET NUMBER: 2018-0982-EAQ-E; IDENTIFIER: RN102772456; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.9, by failing to obtain approval of an exception request prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-201804864
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 13, 2018

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Enforcement Orders

An agreed order was adopted regarding Hidalgo County, Docket No. 2016-1986-MLM-E on November 14, 2018, assessing $8,050 in administrative penalties with $1,610 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding STAFF WATER SUPPLY CORPORATION, Docket No. 2016-2010-PWS-E on November 14, 2018, assessing $690 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Leland Duncan, Docket No. 2017-0146-MLM-E on November 14, 2018, assessing $9,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Springtown, Docket No. 2017-0207-MWD-E on November 14, 2018, assessing $8,000 in administrative penalties with $1,600 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding INU USA, INC. d/b/a Little Elm Gas & More, Docket No. 2017-0407-PST-E on November 14, 2018, assessing $29,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Wilmer, Docket No. 2017-0493-MLM-E on November 14, 2018, assessing $1,387 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Winter Garden Park Corporation, Docket No. 2017-0561-MWD-E on November 14, 2018, assessing $16,876 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TUCKER FUEL & OIL, CO., Docket No. 2017-0749-PST-E on November 14, 2018, assessing $26,783 in administrative penalties with $5,356 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ASHLEY AND FAGAN INVESTMENTS CO. INC. dba Rio Brazos Water System, Docket No. 2017-0812-PWS-E on November 14, 2018, assessing $1,303 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FRM ENTERPRISES, INC. dba Happy Kampers, Docket No. 2017-0824-PST-E on November 14, 2018, assessing $30,481 in administrative penalties with $6,096 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Kemp, Docket No. 2017-0831-MWD-E on November 14, 2018, assessing $79,609 in administrative penalties with $15,921 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R-1 Management, LLC, Docket No. 2017-0927-PWS-E on November 14, 2018, assessing $603 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Cleburne, Docket No. 2017-1051-WQ-E on November 14, 2018, assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charles Wesley Graham dba Graham Land and Cattle, Docket No. 2017-1084-AGR-E on November 14, 2018, assessing $12,725 in administrative penalties with $2,545 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ackerly, Docket No. 2017-1086-PWS-E on November 14, 2018, assessing $374 in administrative penalties with $321 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Richfield Sulphur Solutions, Inc., Docket No. 2017-1115-AIR-E on November 14, 2018, assessing $8,625 in administrative penalties with $1,725 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MOUNTAIN BREEZE, L.L.C., Docket No. 2017-1147-PWS-E on November 14, 2018, assessing $4,821 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Spur, Docket No. 2017-1270-MWD-E on November 14, 2018, assessing $11,663 in administrative penalties with $2,332 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MORGAN BUILDING & SPA MANUFACTURING CORPORATION, Docket No. 2017-1326-MLM-E on November 14, 2018, assessing $25,996 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JAYALAKSHMI GROUP LLC dba Ice House, Docket No. 2017-1349-PST-E on November 14, 2018, assessing $9,101 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Tommy Kear, Docket No. 2017-1537-MSW-E on November 14, 2018, assessing $11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAPLE WATER SUPPLY CORPORATION, Docket No. 2018-0017-PWS-E on November 14, 2018, assessing $810 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, Docket No. 2018-0066-PST-E on November 14, 2018, assessing $7,751 in administrative penalties with $1,550 deferred. Information concerning

any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rosebud-Lott Independent School District, Docket No. 2018-0120-PWS-E on November 14, 2018, assessing $405 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IBG ENTERPRISES, LLC, Docket No. 2018-0121-PWS-E on November 14, 2018, assessing $949 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunset Water, LLC, Docket No. 2018-0131-PWS-E on November 14, 2018, assessing $1,182 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201804896
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Enforcement Orders

An agreed order was adopted regarding Gulf Coast Stabilized Materials LLC, Docket No. 2017-0009-AIR-E on November 13, 2018, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Seadrift, Docket No. 2017-0523-IWD-E on November 13, 2018, assessing $2,500 in administrative penalties with $500 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rene De La Hoya dba De La Hoya Motors, Docket No. 2017-0768-AIR-E on November 13, 2018, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose A. Cuevas, Docket No. 2017-1008-PST-E on November 13, 2018, assessing $5,707 in administrative penalties with $2,107 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Venus, Docket No. 2017-1104-PWS-E on November 13, 2018, assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sanjaykumar Patel dba Quick Pick, Docket No. 2017-1229-PST-E on November 13, 2018, assessing $6,975 in administrative penalties with $1,395 deferred. Information concerning any aspect of this order may be obtained by contacting Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Duchman, Ltd. dba Duchman Family Winery, Docket No. 2017-1312-PWS-E on November 13, 2018, assessing $1,961 in administrative penalties with $392 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SPEEDY BUSINESS, INC. dba Speedy Food Market, Docket No. 2017-1393-PST-E on November 13, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Siesta Shores Water Control and Improvement District, Docket No. 2017-1428-PWS-E on November 13, 2018, assessing $1,006 in administrative penalties with $201 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GLENN A. SMITH CORPORTATION, Docket No. 2017-1464-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WAANIYAH TRADERS INC dba Express Food Mart, Docket No. 2017-1651-PST-E on November 13, 2018, assessing $5,370 in administrative penalties with $1,074 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K&K Inez Properties, LLC, Docket No. 2017-1706-WR-E on November 13, 2018, assessing $787 in administrative penalties with $157 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HABIB TRADING INC dba Super Stop, Docket No. 2017-1717-PST-E on November 13, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BZ Enterprises, Inc. dba I-35 Texaco, Docket No. 2018-0009-PST-E on November 13, 2018, assessing $4,924 in administrative penalties with $984 deferred. Information concerning any aspect of this order may be obtained by contact-

ing Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Broussard Brothers, LLC dba Circle B, Docket No. 2018-0043-PST-E on November 13, 2018, assessing $6,975 in administrative penalties with $1,395 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Comal Independent School District, Docket No. 2018-0095-MWD-E on November 13, 2018, assessing $2,800 in administrative penalties with $560 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CEDAR SHELL LLC, Docket No. 2018-0105-PST-E on November 13, 2018, assessing $4,395 in administrative penalties with $879 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CINCO J., INC. dba Johnson Oil Bulk Plant, Docket No. 2018-0136-PST-E on November 13, 2018, assessing $3,010 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johan Gerrit Koke and Sonya Ann Koke dba Blue Jay Dairy, Docket No. 2018-0186-AGR-E on November 13, 2018, assessing $2,963 in administrative penalties with $592 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CADILLAC WATER CORPORATION, Docket No. 2018-0188-PWS-E on November 13, 2018, assessing $392 in administrative penalties with $78 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SD&B Enterprise, LLC, Docket No. 2018-0197-PST-E on November 13, 2018, assessing $4,687 in administrative penalties with $937 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ky Cheng dba Angus Discount Beer & Wine, Docket No. 2018-0238-PST-E on November 13, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Manakamana Properties, Inc. dba Proctor Grocery, Docket No. 2018-0250-PST-E on November 13, 2018, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MB STARMART CONVENIENCE STORES LLC dba Star Mart 4, Docket No. 2018-0257-PST-E on November 13, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fred Riter dba Canyon Lake RV Park, Docket No. 2018-0262-PWS-E on November 13, 2018, assessing $200 in administrative penalties with $40 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Union Tank Car Company, Docket No. 2018-0284-AIR-E on November 13, 2018, assessing $1,900 in administrative penalties with $380 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Professional Transport & Installation, Inc., Docket No. 2018-0288-WQ-E on November 13, 2018, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KIDACIOUS ACADEMY, INC., Docket No. 2018-0301-PWS-E on November 13, 2018, assessing $229 in administrative penalties with $183 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blue Cube Operations LLC, Docket No. 2018-0302-AIR-E on November 13, 2018, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Jo Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Syntech Chemicals Inc., Docket No. 2018-0394-AIR-E on November 13, 2018, assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTG FUELS, INC. dba Sunnyside Gascard 150403, Docket No. 2018-0409-PST-E on November 13, 2018, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LYFORD GIN ASSOCIATION, Docket No. 2018-0445-PST-E on November 13, 2018, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding P.M. Petroleum Inc dba Hamilton Market, Docket No. 2018-0480-PWS-E on November 13, 2018, assessing $260 in administrative penalties with $52 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fritz Town Entertainment LLC, Docket No. 2018-0514-PWS-E on November 13, 2018, assessing $458 in administrative penalties with $91 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Ricky W. Widner, Docket No. 2018-0702-OSI-E on November 13, 2018, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding OAKWOOD CUSTOM HOMES GROUP LTD, Docket No. 2018-0708-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GVA Assets, LLC, Docket No. 2018-0723-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kenmark Homes, LP, Docket No. 2018-0823-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding DLH WENDLAND LLC, Docket No. 2018-0940-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Silver, Samson H., Docket No. 2018-0980-WQ-E on November 13, 2018, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Garcia, Philip J., Docket No. 2018-1101-WOC-E on November 13, 2018, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201804897
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 153778

APPLICATION. Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 153778 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 1020 Triple S Trail, Johnson City, Blanco County, Texas 78636. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.267551&lng=-98.498372&zoom=13&type=r. This application was submitted to the TCEQ on September 27, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 25, 2018.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, January 17, 2019, at 6:00 p.m.

Lyndon B. Johnson High School Commons Area

505 North Nugent

Johnson City, Texas 78636

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Bldg. A Rm. 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: November 8, 2018

TRD-201804899
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of District Petition

Notice issued November 9, 2018

TCEQ Internal Control No. D-08092018-027; BEAZER HOMES TEXAS, L.P., A Delaware limited partnership, and GP 344, LTD., a Texas limited partnership (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 558 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners Jeff Anderson, Vice President of Beazer Homes Texas Holdings, Inc., a Delaware corporation and general partner of Beazer Homes Texas, L.P., a Delaware Limited Partnership, and Richard Hale, Executive Vice President of PSWA, Inc., a Texas corporation and sole general partner of GP 344, LTD., a Texas limited partnership are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholder, on the land to be included in the proposed District; (3) the proposed District will contain approximately 371.81 acres located within Harris County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Houston (City), Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2018-557, passed and approved July 31, 2018, the City Secretary of the City of Houston, 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, maintain, operate, improve, and extend a waterworks and sanity sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District; (3) control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description; and (4) purchase, construct, acquire, maintain, operate, improve, and extend of such additional facilities, including roads, parks, and recreation facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created. 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 such information available at this time, that the cost of said project will be approximately $43,845,900 for utilities, $950,541 for road projects, plus $ 6,163,800 for recreational facilities.

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, 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 website at www.tceq.state.tx.us.

TRD-201804902
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of 7 Star Petroleum

Inc dba 7 Star Food: SOAH Docket No. 582-19-1198; TCEQ Docket No. 2018-0209-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 13, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 17, 2018, concerning assessing administrative penalties against and requiring certain actions of 7 STAR PETROLEUM INC dba 7 Star Food, for violations in Bowie County, Texas, of: Tex. Water Code §26.3475(a), (c)(1), and (d) and 30 TAC §§37.815(a) and (b), 334.10(b)(2), 334.49(c)(4)(C), and 334.50(b)(1)(A) and (b)(2).

The hearing will allow 7 STAR PETROLEUM INC dba 7 Star Food, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford 7 STAR PETROLEUM INC dba 7 Star Food, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of 7 STAR PETROLEUM INC dba 7 Star Food to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** 7 STAR PETROLEUM INC dba 7 Star Food, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 TAC chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pearson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 13, 2018

TRD-201804904
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Shehab Alkam dba Big 5 Beverage: SOAH Docket No. 582-19-1197; TCEQ Docket No. 2017-1644-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 13, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 14, 2018, concerning assessing administrative penalties against and requiring certain actions of Shehab Alkam dba Big 5 Beverage, for violations in Dallas County, Texas, of: Tex. Water Code §26.3475(c)(1) and (c)(2) and 30 TAC §§334.42(i) and 334.50(b)(1)(A) and (d)(1)(B)(ii).

The hearing will allow Shehab Alkam dba Big 5 Beverage, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Shehab Alkam dba Big 5 Beverage, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Shehab Alkam dba Big 5 Beverage to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Shehab Alkam dba Big 5 Beverage, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 TAC chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 13, 2018

TRD-201804903
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of Public Meeting: Proposed Air Quality Permit Number 149092

APPLICATION. Capital Ready Mix LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Air Quality Permit Number 149092, which would authorize construction of a Concrete Batch Plant located at 13133 South Wayside Drive, Houston, Harris County, Texas 77048. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.61889&lng=-95.31722&zoom=13&type=r. The facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on October 24, 2017. The executive director has determined the application is administratively complete and will conduct a technical review of the application.

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:

Monday, December 10, 2018, at 7:00 p.m.

Exclusive Palace Reception Hall

6811 Bellfort Street

Houston, Texas 77087

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://www14.tceq.texas.gov/epic/eComment/. 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 website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

The application will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and the Johnson Neighborhood Library, 3517 Reed Road, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Capital Ready Mix LLC, 514 Forest Oaks Drive, Houston, Texas 77017-4937 or by calling Mr. Venkata Godasi, AARC Environmental, Inc., at (713) 974-2272.

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: November 12, 2018

TRD-201804901

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment Proposed Limited Scope Amendment to Permit No. 2370

Application. Wastewater Residuals Management, LLC, 10217A Wallisville Road, Houston, Harris County, Texas 77013, the owner and operator of a Type V Grease and Grit Trap Waste Processing Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a limited scope permit amendment to authorize: a change in operating hours to 24 hours a day and 7 days a week; an increase from 12,000 to 17,000 gallon working capacity storage tanks in Phase II; and a revised spill containment and closure cost estimate. The facility is located at the address noted above. The TCEQ received this application on September 7, 2018. The permit application is available for viewing and copying at the Jacinto City Library, 921 Akron Street, Jacinto City, Harris County, Texas 77029, and may be viewed online at http://cook-joyce.com/permits. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.8&lng=-95.250555&zoom=13&type=r. For exact location, refer to application.

The TCEQ Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <www.tceq.texas.gov/goto/pep>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Wastewater Residuals Management, LLC, at the address stated above or by calling Mr. Leo Ounanian, President at (713) 828-5487.

TRD-201804898

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 14, 2018

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due July 16, 2018, for Candidates and Officeholders

James Paul Rosemergy, 320 Decker Dr., Fort Worth, Texas 75062

TRD-201804844
Seana Willing
Executive Director
Texas Ethics Commission
Filed: November 9, 2018

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Texas Facilities Commission

Request for Proposals #303-0-20644

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Audit Division (CPA), announces the issuance of Request for Proposals (RFP) #303-0-20644. TFC seeks a five (5) or ten (10) year lease of approximately 6,931 square feet of office space in Dallas, Texas.

The deadline for questions is December 3, 2018, and the deadline for proposals is December 12, 2018, at 3:00 p.m. The award date is January 17, 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/303-0-20644.

TRD-201804890
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: November 14, 2018

♦ ♦ ♦

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 29, 2018, to November 9, 2018. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, November 16, 2018. The public comment period for this project will close at 5:00 p.m. on Sunday, December 16, 2018.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Lehigh Cement Company, LP

Location: The project site is located in Buffalo Bayou (Houston Ship Channel) at 9500 Clinton Drive, in Houston, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.726481 -95.252085

Project Description: The applicant proposes to mechanically/hydraulically dredge 14.3 acres, install a 615.5-linear-foot bulkhead, and discharge fill material into 0.34 acres of Buffalo Bayou, associated with the construction of a dock, mooring, and breasting structures along the Houston Ship Channel. Specifically, of the 14.3 acres, approximately 1.2 acres (approximately 1,936 cubic yards) are uplands that will be excavated to create open water. The newly created 1.2 acres of open water and 13.1 acres of existing open water will be hydraulically dredged below the Mean Lower Low Water (MLLW) line to the elevations shown on the attached exhibits. Approximately 508,470 cubic yards will be hydraulically dredged to a depth of -45.5 feet (-41.5 feet plus 2 feet of advance dredge and 2 feet of over dredge). Total excavation/dredge is approximately 510,406 cubic yards. Approximately 0.23 acres of rubble, rock bottom, palustrine wetlands (PRB2) and 0.11 acres of existing open water will be filled with compacted soil backfill behind the proposed steel sheetpile bulkhead. Approximately 1.2 acres of open water will be created by excavating uplands in front of the proposed bulkhead. Therefore, the proposed project's net impact to waters of the United States will be the creation of approximately 1.09 acres of open water. Total dock length is approximately 615 linear feet. Of the 615 linear feet, approximately 215 linear feet of dock and associated pipe piles will be in an area that is currently open water. The remaining 400 linear feet of dock and associated pipe piles will be in new open water to be created by excavating uplands in front of the proposed steel sheetpile bulkhead.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00181. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1003-F1

Applicant: Lone Star NGL Mont Belvieu, LP

Location: The project site is located in wetlands located approximately 1.5 miles northeast of the intersection of East Wallisville Road and Sjolander Drive, in Mont Belvieu, Chambers County, Texas.

Latitude & Longitude (NAD 83): 29.847201 -94.931987

Project Description: The applicant proposes to permanently discharge fill material into 16.58 acres of forested wetlands to construct a natural gas processing and distilling plant and associated appurtenances such as roads, parking areas, and facilities management buildings. The applicant proposed to mitigate for the proposed impacts by purchasing 8.4 Physical functional capacity units (FCUs), 13.3 Biological FCUs, and 9.9 Chemical FCUs from the Gin City Mitigation Bank.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00028. This application will be reviewed pursuant Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1045-F1

Applicant: Lone Star NGL Mont Belvieu, LP

Location: The project site is located in wetlands located approximately 1.8 miles northeast of the intersection of East Wallisville Road and Sjolander Drive, in Mont Belvieu, Chambers County, Texas.

Latitude & Longitude (NAD 83): 29.843570 -94.917922

Project Description: The applicant proposes to permanently discharge fill material into 9.02 acres of forested wetlands to construct a natural gas processing and distilling plant and associated appurtenances such as roads, parking areas, and facilities management buildings. The applicant proposed to mitigate for the proposed impacts by purchasing 4.8 Physical functional capacity units (FCUs), 4.9 Biological FCUs, and 5.4 Chemical FCUs from the Gin City Mitigation Bank.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00551. This application will be reviewed pursuant Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1046-F1

Applicant: Port of Beaumont

Location: The project site is located in the Neches River at two different dock locations, at Wharf Extension and Ship Dock OC2, in Beaumont, in Orange and Jefferson Counties, Texas.

Latitude & Longitude (NAD 83): Wharf Extension: 30.078393 -94.086870;

Ship Dock OC2 30.079057 -94.081402

Project Description: The applicant proposes to construct a 185-foot-long by 132-foot-wide extension of a previously authorized wharf dock. The applicant also proposes to construct a new 480-foot-long by 115-foot-wide Ship Dock OC2 containing a 130-foot-long by 60-foot-wide dock platform, a 25-foot-wide by 88-foot-long gangway tower, an 18-foot-wide by 160-foot-long approachway, a walkway extending from each side of the dock platform, a new firewater pump with intake valve, and a loading arm. The applicant proposes to install 4 barge monopiles, 6 breasting dolphins, and 6 mooring dolphins, and discharge a total of 374 cubic yards of fill material in the form of a 1,275-linear-foot revetment against the shoreline beneath the mean high tide line of the Neches River. The applicant proposes to mechanically and/or hydraulically dredge 8.95 acres in the vicinity of the proposed Ship Dock OC2 to a depth of -40 mean low tide plus 2 feet overdredge to remove an estimated 320,000 cubic yards of material. The applicant proposes to place the dredged material into dredged material placement areas 23, 24, 25, and/or 26. The applicant proposes to construct an 8-foot-wide by 60-foot-long wooden pier adjacent to proposed concrete boat ramp. The applicant proposes to discharge a total of 40 cubic yards of fill material to construct a 20-foot-wide by 100-foot-long concrete boat ramp. The applicant will dredge a total of 250 cubic yards of material in the vicinity of the concrete boat ramp and place this dredged material into dredged material placement areas 23, 24, 25, and/or 26.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1997-01754. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1048-F1

Applicant: Port Arthur LNG Common Facilities Company, LLC

Location: The project site is located in wetlands, as well as the Sabine Neches Waterway (SNWW), Neches River, Sabine Lake, Sabine Pass, and various other waterways. The terminal site is located north of Keith Lake, and west of the SNWW, in Port Arthur, Jefferson County, Texas. The Texas Connector pipeline has two segments. The northern segment of the Texas Connector pipeline extends from the terminal site, north across the Neches River to mile point 28.5, east of Beaumont, Texas, in Jefferson and Orange Counties, in Texas. The southern segment of the Texas Connector pipeline extends from the terminal site, south across Sabine Pass, to mile point 7.2, east of Sabine Pass, in Jefferson County, Texas, and Cameron Parish, Louisiana.

Latitude & Longitude (NAD 83): 29.792485 -93.955590

Project Description: The applicant proposes to construct, install, operate, and maintain structures and equipment necessary for liquefaction and export of natural gas, including construction of three pipeline segments with compressor stations and attendant features. Terminal features include liquefaction trains, operating facilities, a marine berth, marine offloading facility (MOF), and a pioneer dock to be constructed adjacent to the SNWW. The applicant also proposes to construct a new segment of State Highway 87 that would reroute the roadway behind the proposed terminal facility. Approximately 967.1 acres of wetlands and waters of the US are proposed to be impacted to construct the terminal site. Approximately 317.7 acres of wetlands and waters of the US are proposed to be impacted to construct the Texas connector pipeline. The applicant proposes to dredge 7.8 million cubic yards of material from marine berth, MOF, and Pioneer Dock. Approximately 5.4 million cubic yards of material is proposed to be placed into dredge material placement areas (DMPAs) 8, 9a, and/or 9b depending on capacity and availability. Approximately 2.4 million cubic yards of material is proposed to be placed into the Texas Parks and Wildlife Department JD Murphree Wildlife Management Area (JDMWMA), for beneficial use, to create and restore marsh habitat.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2008-00497. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1049-F1

Applicant: Phillips 66 Pipeline, LLC

Location: The project site is located along the Phillips 66 Terminal on the Neches River, at 128 Magnolia Avenue, in Nederland, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 30.010435 -93.969027

Project Description: The applicant proposes to modify the permit for the extension of time and consolidate previously authorized permits; and to conduct new work associated with a new dredging cut and a new marine ship dock (Dock 4). Refer to previously authorized permitting in Attachment A, in 4 sheets, for a Regulatory Permit History Table. Specifically, the applicant also proposes the following new work: (1)

To remove an existing concrete boat ramp and install a new boat launch constructed of dual steel rails and an adjacent walkway at a location approximately 2,850 feet upstream from its current location; (2) To install 950 linear feet of bulkhead at or above the ordinary high watermark; To permanently discharge of 1,827.21 cubic yards of fill material into 3 wetlands, totaling 1.10 acres, and temporarily discharge fill material into 0.11 acre of wetlands during the construction of a new 120-foot by 70-foot marine Ship Dock (Dock 4), 4 breasting dolphins, 4 mooring dolphins, protection piles, utilities, supply infrastructure, equipment area, laydown areas, and pipe racks; (3) To dredge to -42 mean lower low water plus 2 foot overdraft by removing 155,000 cubic yards from a new area for Ship Dock 4 area (8.7 acre); (4) To perform maintenance dredging by hydraulic or mechanical means, within an 8.7-acre area for new Ship Dock 4, for an additional 10 years and remove approximately 50,000 cubic yards per event (about every two years); and (5) To utilize dredge material placement areas 13, 14, 17, 18, 21, 22, 23 (preferred), 24, and/or 25 for the effluent discharge of return water.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2005-00409. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1050-F1

Applicant: AccuTRANS Inc.

Location: The project is located along the shoreline of the Corpus Christi Ship Channel (CCSC) Inner Harbor (IH), on the south side of the Joe Fulton International Trade Corridor, approximately 0.5 mile west of the Navigation Boulevard and Burleson Street intersection in Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.821689 -97.427871

Project Description: The applicant proposes to construct a new barge dock and dredge a docking basin. Construction would involve placement of approximately 0.24 acre of fill material for the installation of approximately 2,288 linear feet of bulkhead, and hydraulically dredging approximately 178,600 cubic yards of material within a 5.47-acre area to a depth of -16 to -20 feet below mean lower low water (MLLW). Dredged material would be placed in one or more of the following placement areas (PAs): IH-PA 3A, IH-PA 3B, IH-PA 1, and/or IH-PA 2. The applicant has also requested authorization for a 10- year maintenance dredging operation within the proposed docking basin.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00272. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission of Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1077-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201804883
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: November 13, 2018

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Funding Availability

The Texas Department of Housing and Community Affairs ("Department") is making available 2018 HOME Investment Partnerships Program ("HOME") funding for single family activities for Homeowner Rehabilitation Assistance ("HRA").

Funds will be available through the 2018 HOME Single Family Programs HRA General Set-Aside Reservation System Notice of Funding Availability ("NOFA"). The NOFA is for approximately $11,694,221 to be funded through participation in the Reservation System. Funding made available through the Reservation System may be increased from time to time as funds become available. Approval to receive a Reservation System Participant agreement is not a guarantee of funding availability. These set-aside funds are subject to the Regional Allocation Formula.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm.*

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201804894
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 14, 2018

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Notice of Funding Availability

The Texas Department of Housing and Community Affairs ("Department") is making available 2018 HOME Investment Partnerships Program ("HOME") funding for single family activities for Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA").

Funds will be available through the 2018 HOME Single Family Programs HBA and TBRA Notice of Funding Availability ("NOFA"). The NOFA is for approximately $7,796,148 to be awarded in general set-aside HOME funds from the 2018 allocation through an Open Application Cycle for HBA and TBRA. Applications for an Open Application Cycle are prioritized on a first-come, first-serve basis based on Application receipt date and time. Applications for award will be accepted beginning January 22, 2019, and ending May 28, 2019, or when all funds are awarded, whichever comes earlier. These set-aside funds are subject to the Regional Allocation Formula.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Con-

struction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm.*

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on an open application cycle.

TRD-201804895
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 14, 2018

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RFP for Program Administration Services SF Residential Mortgage Loan and MCC Programs

The Texas Department of Housing and Community Affairs has posted a Request for Proposal #332-RFP19-1004 for Program Administration Services. If you are interested in this service opportunity, please go to the Electronic State Business Daily website: http://www.txsmartbuy.com/sp and enter the Proposal Number listed above to search for the proposal specification. You may also click on the link below to directly access the bid:

http://www.txsmartbuy.com/sp/332-RFP19-1004

-or-

Go to the TDHCA Department's website: www.tdhca.state.tx.us and look under the What's New tab on the middle right side of the homepage, where it will be posted.

Please, contact Julie M. Dumbeck, (512) 475-3991 or julie.dumbeck@tdhca.state.tx.us for any questions or if you are unable to access the specification.

TRD-201804861
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 12, 2018

♦ ♦ ♦

Request for Proposal for Immigration Status Verification Service

The Texas Department of Housing and Community Affairs announces a Request for Proposal ("RFP") #332-RFP19-1005 for *Immigration Status Verification Service.* If interested, please provide a response to this RFP by December 11, 2018, at 2:00 p.m. Austin local time. The RFP can be found on the Texas Department of Housing and Community Affairs' website at www.tdhca.state.tx.us under "What's New" on the middle right side of the homepage as well as on the Electronic State Business Daily (ESBD) website at http://www.txsmartbuy.com/sp/332-RFP19-1005. If you have any questions, please contact Julie Dumbeck, Manager of Purchasing/Staff Services, at (512) 475-3991 or by email at julie.dumbeck@tdhca.state.tx.us.

TIME FRAME:

Posting date for RFP: November 8, 2018

Questions Due: November 19, 2018, at 2:00 p.m. (Austin local time)

Questions/Answers Posted: November 21, 2018

Response Due: December 11, 2018, at 2:00 p.m. (Austin local time)

TRD-201804893
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 14, 2018

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"Third Amendment to 2018-1 Multifamily Direct Loan" Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2016, 2017, and 2018 Grant Year HOME allocation, the 2017 and 2018 Grant Year National Housing Trust Fund ("NHTF") allocation, loan repayments from the Tax Credit Assistance Program ("TCAP Repayment funds" or "TCAP RF"), and program income generated by Neighborhood Stabilization Program Round 1 ("NSP1") loan repayments. The Department may amend this NOFA or the Department may release a new NOFA upon receiving its 2018 HOME or 2018 NHTF allocation from HUD or additional TCAP or NSP1 loan repayments. These funds have been programmed for multifamily activities including acquisition and/or refinance of affordable housing involving new construction or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of up to $62,304,276 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans. Of that amount, at least $8,215,058 will be available for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this Notice of Funding Availability ("NOFA"); up to $22,324,041 will be available for applications proposing Supportive Housing in accordance with 10 TAC §10.3(a) of the 2018 Uniform Multifamily Rules or applications that commit to setting aside units for extremely low income households as required by 10 TAC §13.4(a)(1)(A)(ii); the remaining funds will be available for applications that do not meet the requirements above.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified as earning 80 percent or less of the applicable Area Median Family Income.

All funding will be available on a statewide basis until 5:00 p.m., Austin local time, on November 30, 2018.

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m., Austin local time, on November 30, 2018. The "Amended 2018-1 Multifamily Direct Loan" NOFA is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the Third Amendment to the NOFA is posted.

Questions regarding the 2018-1 Multifamily Direct Loan NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-201804892
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 14, 2018

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for OSCAR INSURANCE COMPANY, a foreign Health Maintenance Organization, to add DBA (doing business as) OSCAR MANAGED CARE. The home office is in New York, New York.

Application to do business in the state of Texas for SYNERGY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Charlotte, North Carolina.

Application for HANOVER LLOYD'S INSURANCE COMPANY, a domestic fire and/or casualty company, to change its name to THE HANOVER CASUALTY COMPANY. The home office is in Dallas, Texas.

Application for GREYHAWK INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to ASCOT INSURANCE COMPANY. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201804889
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: November 14, 2018

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Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §13.064, the Office of Public Utility Counsel (OPUC) will conduct its annual public hearing.

The public hearing will be held on the date, time and location indicated below.

Tuesday, December 4, 2018, at 11:00 a.m.

William B. Travis Building

Conference Room #1-100

1701 N. Congress Avenue

Austin, Texas 78701

OPUC represents the interests of residential and small commercial consumers, as a class, in electric, telecommunications and water and wastewater proceedings before the Public Utility Commission, Electric Reliability Council of Texas, and state and federal courts. OPUC seeks public input on its priorities for the coming year.

All interested persons are invited to attend and provide input.

For further information contact Brad Temple, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or (877)-839-0363 or email: opuc_customer@opuc.texas.gov.

TRD-201804885
Tonya Baer
Public Counsel
Office of the Public Utility Counsel
Filed: November 14, 2018

♦ ♦ ♦

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 November 8, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of NET Power, LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48862.

The Application: NET Power, LLC filed an application for approval of the conveyance of up to 25% of the membership interests in NET Power to OLCV Net Power, LLC. NET Power is partially owned by Exelon Generation Company, LLC. OLCV Net Power is wholly-owned by Occidental Petroleum Corporation. NET Power owns and operates a 25 MW natural gas fueled generation facility that is interconnected to the Electric Reliability Council of Texas (ERCOT). The combined generation owned and controlled by OLCV Net Power and its affiliates following the proposed sale will not exceed twenty percent of the total electricity offered for sale in ERCOT.

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 48862.

TRD-201804862
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 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 November 9, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application for the Sale, Transfer, or Merger of the Crazy Horse Ranchos Water System in Parker County to Patterson Water Supply, LLC, Temporary Manager, Docket Number 48865.

The Application: The applicant requests approval for the transfer of Crazy Horse's facilities and water service area under water certificate of convenience and necessity number 11931 to Patterson Water Supply. The requested transfer includes 250 acres and 62 current customers.

Persons who wish to intervene in the proceeding or comment upon 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 Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48865.

TRD-201804905
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2018

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Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 7, 2018, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Hill Country Telephone Cooperative, Inc. for Approval of a Minor Rate Change under 16 Texas Administrative Code §26.171, Tariff Control Number 48857.

The Application: Hill Country filed an application to increase basic local access line rates for residential customers from $20.00 to $22.25 and business customers from $22.00 to $24.00. business customers in the exchange of Center Point will not see a change in their rates. Concurrent with the increase in basic local access line rates, HCTC will discontinue billing the $2.00 Access Recovery Charge to residential customers. Accordingly, residential customers will experience an estimated net decrease on their bill of $.08, inclusive of current taxes and regulatory fees. If approved, the proposed rate changes will take effect on December 2, 2018. The estimated net increase to HCTC's total regulated intrastate gross annual revenues due to the proposed increase is $309,027.

If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of the local service customers to which this proposal applies by December 2, 2018, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s). As of October 1, 2018, the 5% threshold equals approximately 460 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 2, 2018. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 48857.

TRD-201804859
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2018

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Notice of Intent to Implement a Minor Rate Change Under 16 Texas Administrative Code §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on November 7, 2018, to implement a minor rate change under 16 Texas Administrative Code §26.171.

Tariff Control Title and Number: Notice of Riviera Telephone Company, Inc. for Approval of a Minor Rate Change under 16 Texas Administrative Code §26.171, Tariff Control Number 48858.

The Application: Riviera proposes to increase basic local access line rates for residential and business customers from $17.65 to $22.25. Concurrent with the increase in basic local access line rates, Riviera will discontinue billing the $3.00 Access Recovery Charge to residential customers. Accordingly, residential customers will experience a net increase on their bill of $1.15, excluding taxes and fees. If approved, the proposed rate changes will take effect on January 1, 2019. The estimated net increase to Riviera's total regulated intrastate gross annual revenues due to the proposed increase is $54,758.40.

If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of the local service customers to which this proposal applies by December 1, 2018, the application will be docketed. The 5% threshold is calculated using the total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s). As of October 1, 2018, the 5% threshold equals approximately 595 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2018. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 48858.

TRD-201804858
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2018

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Supreme Court of Texas

In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9149

ORDER AMENDING TEXAS RULE OF APPELLATE PROCEDURE 25.2

ORDERED that:

1. By order dated April 9, 2018, in Misc. Docket No. 18-007, the Court of Criminal Appeals proposed amendments to Texas Rule of Appellate Procedure 25.2 and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

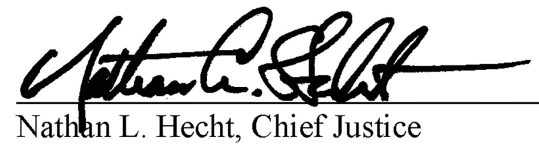
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

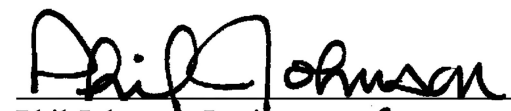
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 5, 2018.

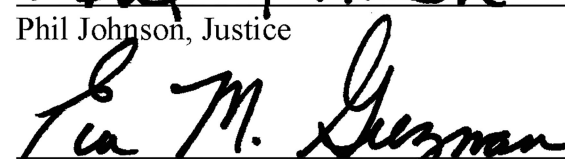


Nathan L. Hecht, Chief Justice

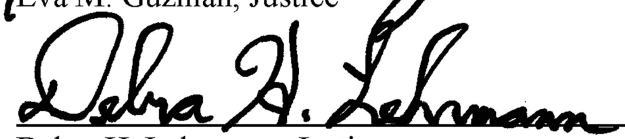
Paul W. Green, Justice



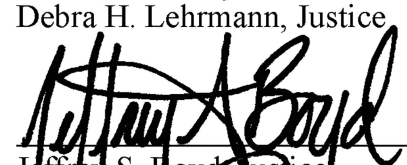
Phil Johnson, Justice



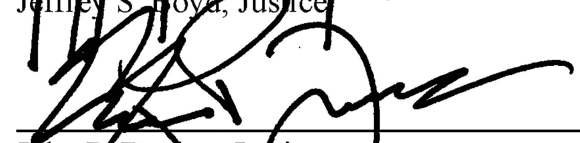
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

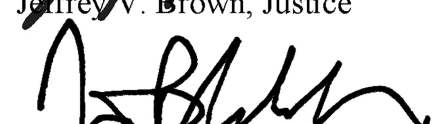


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 7, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9150

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 31.1 AND 31.2

ORDERED that:

1. By order dated June 18, 2018, in Misc. Docket No. 18-013, the Court of Criminal Appeals proposed amendments to Texas Rules of Appellate Procedure 31.1 and 31.2 and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

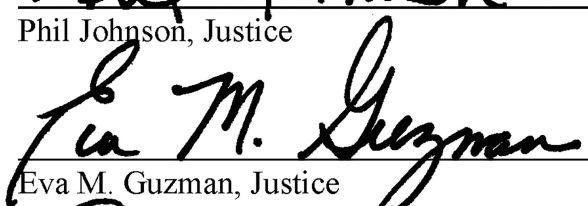
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 5, 2018.

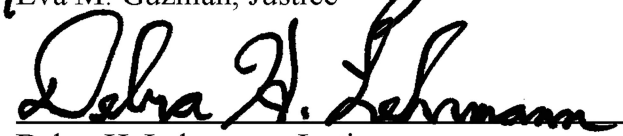
Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

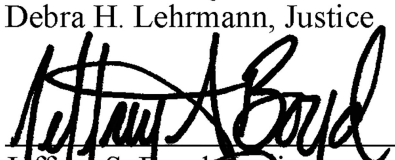
Phil Johnson, Justice



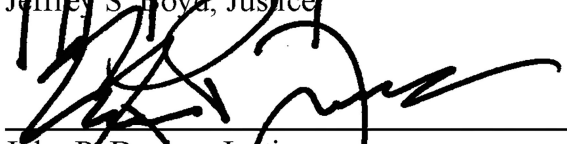
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

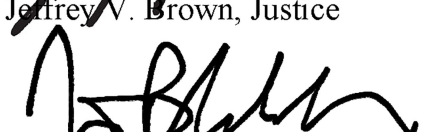


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201804807
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 7, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9151

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 73.1 AND 73.4

ORDERED that:

1. By orders dated April 9, 2018 and September 10, 2018, in Misc. Docket Nos. 18-006 and 18-017, the Court of Criminal Appeals proposed amendments to Texas Rules of Appellate Procedure 73.1 and 73.4 and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

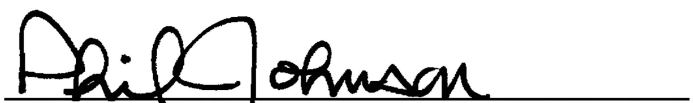
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

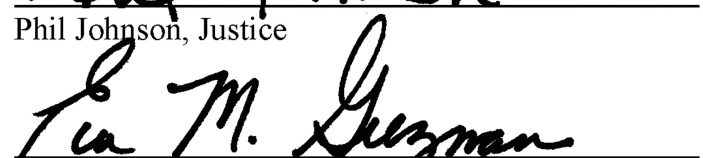
Dated: November 5, 2018.

Nathan L. Hecht, Chief Justice

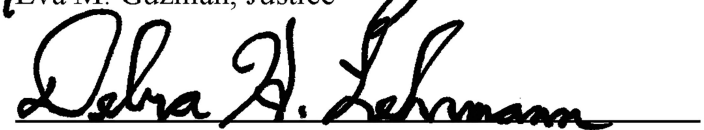
Paul W. Green, Justice



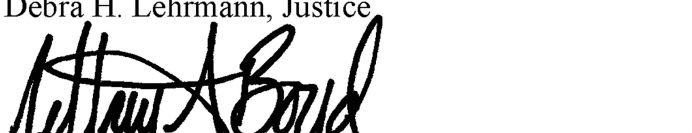
Phil Johnson, Justice



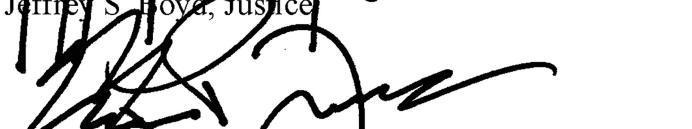
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

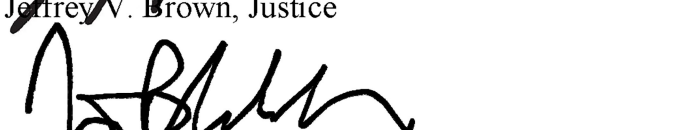


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201804808
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 8, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9152

ORDER AMENDING APPENDIX D OF THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. By order dated June 18, 2018, in Misc. Docket No. 18-014, the Court of Criminal Appeals proposed amendments to Appendix D of the Texas Rules of Appellate Procedure and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

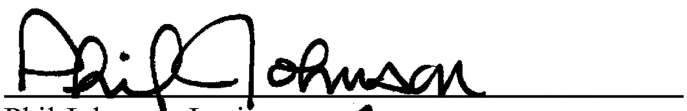
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

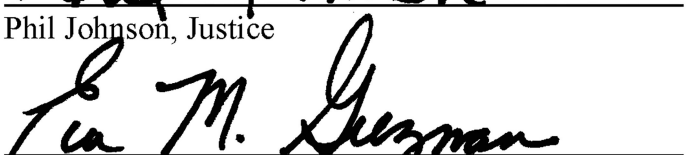
Dated: November 5, 2018.

Nathan L. Hecht, Chief Justice

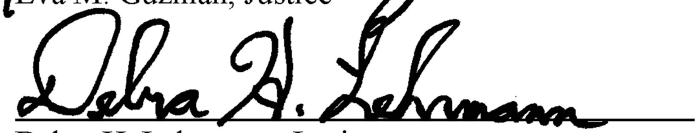
Paul W. Green, Justice



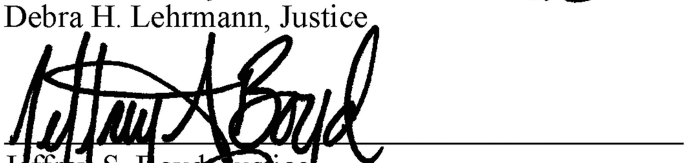
Phil Johnson, Justice



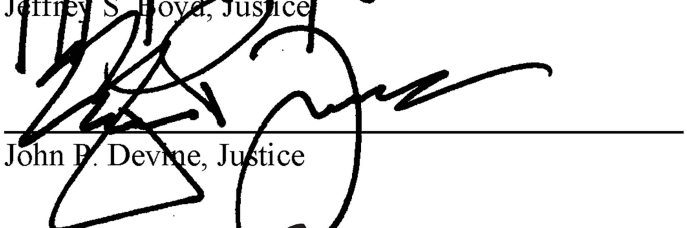
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

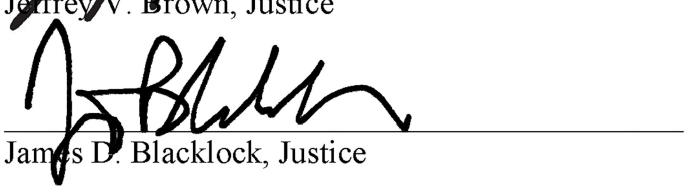


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201804809
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 8, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9153

ORDER AMENDING APPENDIX E OF THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. By order dated September 10, 2018, in Misc. Docket No. 18-018, the Court of Criminal Appeals proposed amendments to Appendix E of the Texas Rules of Appellate Procedure and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

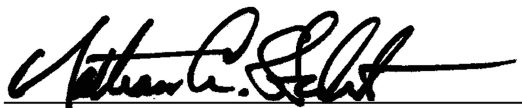
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

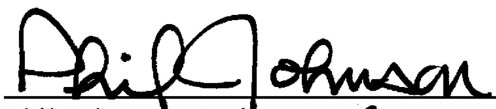
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 5, 2018.

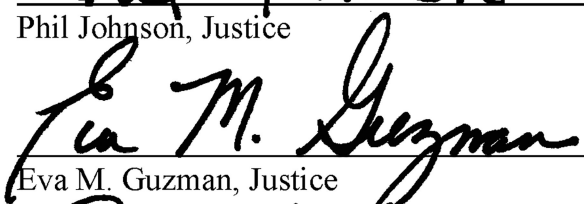


Nathan L. Hecht, Chief Justice

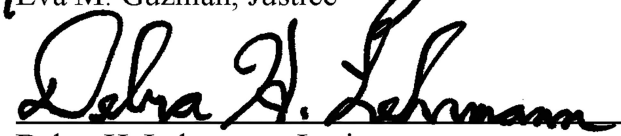
Paul W. Green, Justice



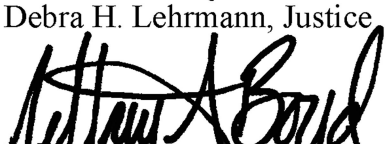
Phil Johnson, Justice



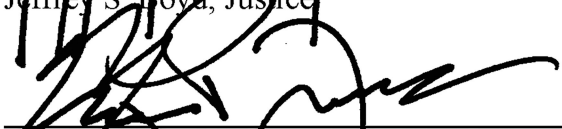
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

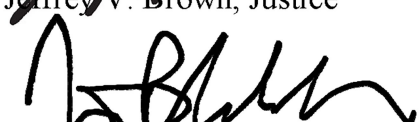


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201804810
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 8, 2018

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9154

ORDER AMENDING APPENDIX F OF THE TEXAS RULES OF APPELLATE PROCEDURE

ORDERED that:

1. By order dated June 18, 2018, in Misc. Docket No. 18-015, the Court of Criminal Appeals proposed amendments to Appendix F of the Texas Rules of Appellate Procedure and invited public comments. This joint order contains the final version of the amendments, which are effective December 1, 2018.

2. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

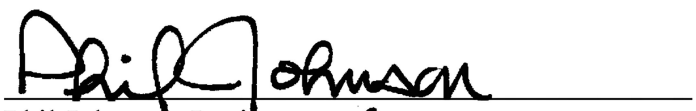
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

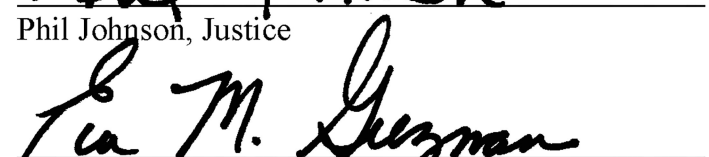
Dated: November 5, 2018.

Nathan L. Hecht, Chief Justice

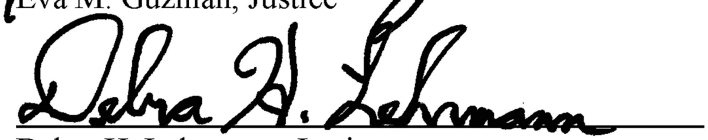
Paul W. Green, Justice



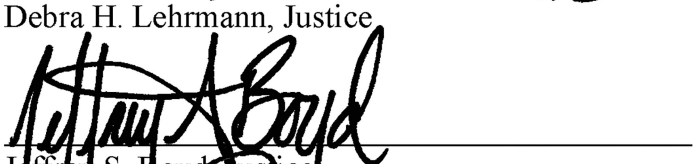
Phil Johnson, Justice



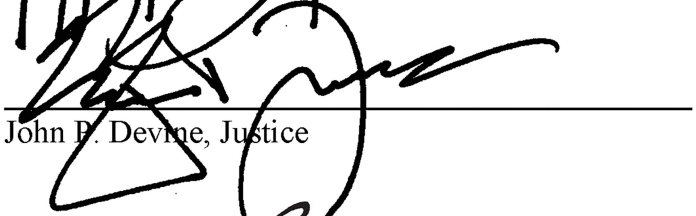
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

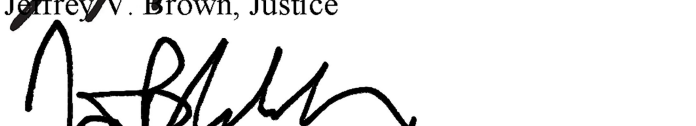


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201804811

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 8, 2018

♦ ♦ ♦

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9156

ORDER ADOPTING SECTION VIII OF PART I OF THE TEXAS BOARD OF LEGAL SPECIALIZATION STANDARDS FOR ATTORNEY CERTIFICATION

ORDERED that:

1. Section VIII of Part I of the Texas Board of Legal Specialization Standards for Attorney Certification is adopted as follows, effective immediately.

2. The Clerk is directed to:

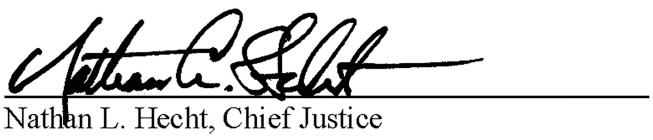
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

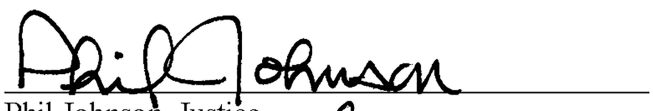
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: November 8, 2018.

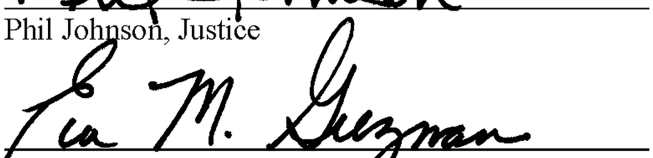


Nathan L. Hecht, Chief Justice

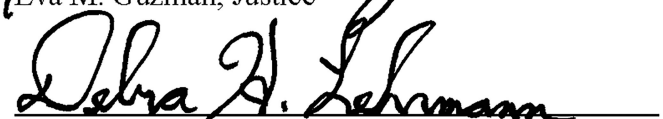
Paul W. Green, Justice



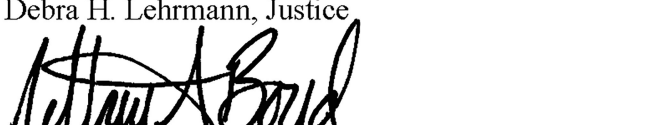
Phil Johnson, Justice



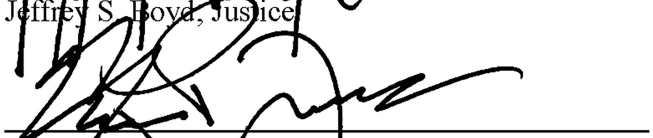
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice

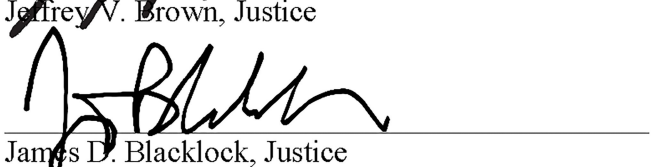


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TEXAS BOARD OF LEGAL SPECIALIZATION
STANDARDS FOR ATTORNEY CERTIFICATION

SECTION VIII
SENIOR STATUS DESIGNATION

A. **WHO MAY QUALIFY.** A board certified attorney may apply for senior status designation in a particular specialty area if the attorney is no longer practicing law on a full-time basis, is at least 70 years old, and has been a board certified attorney in that specialty area for at least 20 consecutive years.

B. **APPLICATION.** A board certified attorney shall apply for senior status designation on a form prescribed and approved by TBLS.

C. **TERM.** The senior status designation, if granted by TBLS, shall expire upon retirement of the board certified attorney or expiration, resignation, or revocation of his or her certificate of special competence.

D. **REQUIREMENTS.**

1. TBLS Standards for Attorney Certification Apply. Except as modified by Section VIII.D.2 below, a board certified attorney who is granted senior status is subject to both the general and area-specific requirements unique to the board certified attorney's specialty area that are set forth in TBLS Standards for Attorney Certification, including the requirement that the board certified attorney remain an active member in good standing with the SBOT.
2. Modifications. A board certified attorney who is granted senior status must:
    a. Required Law Practice. Maintain at least a part-time practice of law with a minimum average of 20 hours per week of legal work done primarily for the purpose of providing legal advice or representation. Legal work may be pro bono or volunteer work.
    b. CLE. For recertification, complete 75 hours of CLE in the specialty area by December 31 of each 5th year of certification.
    c. Substantial Involvement. Devote a minimum of 25% of his or her time practicing law in the specialty area during each year of the 5-year period of certification.
    d. References. For recertification, submit a minimum of 5 names and addresses of attorneys, judges, or both to be contacted as references with whom he or she has had dealings involving matters in the attorney's specialty area since the most recent recertification.
    e. Fees. Pay the required fees except the recertification fee.

E. **DISCLOSURE PROHIBITED**. The senior status designation is an internal designation TBLS utilizes to categorize certifications. A board certified attorney granted senior status designation shall not use the senior status designation on any professional or advertisement materials, including letterhead, business cards, signs, brochures, websites, or social media.

TRD-201804842
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: November 9, 2018

♦ ♦ ♦

Teacher Retirement System of Texas

Award Notice - TRS Contract No. K201900128

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award of a consulting services contract for Microsoft Technical Services to Catapult Systems LLC, Three Barton Skyway, Suite 350, 1221 South Mopac Expressway, Austin, Texas 78746. The initial term of the contract is October 19, 2018 through August 31, 2019. The Consultant will provide support and consulting services, as needed, for implementation of Microsoft's portfolio of products. The contract total for the initial term is estimated to be $1,000,000. The contract term may be renewed for a total of four (4) additional years.

TRD-201804805
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: November 7, 2018

♦ ♦ ♦

Texas Water Development Board

Request for Qualifications for Two Groundwater Availability Modeling Projects

RESPONSES DUE:

12:00 noon, CT, Thursday, December 20, 2018

BACKGROUND:

In 2001 the Texas Legislature mandated that the Texas Water Development Board (TWDB) obtain or develop groundwater availability models for all major and minor aquifers in Texas in coordination with groundwater conservation districts and regional water planning groups (Texas Water Code Section 16.012). The Groundwater Availability Modeling Program grant funds have been used to develop groundwater availability models, upgrade the original models, and conduct other research to improve models that are key to the ongoing groundwater management programs.

PROJECT 1: **Develop conceptual model for the Cross Timbers Aquifer (Estimated Cost: $590,000)**

Per statute, the Texas Water Development Board (TWDB) is tasked with developing numerical groundwater flow models of the major and minor aquifers in Texas. The Cross Timbers Aquifer was designated as a new minor aquifer in December 2017. The aquifer consists of four Paleozoic-age water-bearing formations including, from oldest to youngest, the Strawn, Canyon, Cisco, and Wichita groups. The aquifer is primarily composed of limestones, shales, and sandstones. This project will compile and analyze climate; geology; hydrostratigraphy; water levels; cross-formational flows; aquifer recharge, surface water features, hydraulic properties, natural and man-made discharge, and water quality. This project will collect, analyze, and interpret available data related to Cross Timbers Aquifer including possible flows between the overlying Trinity Aquifer and underlying geologic units and between the Paleozoic units that comprise the aquifer. The project will also investigate and recommend an appropriate boundary for the future model. We have tentatively set the study area from where the Strawn Formation meets the Ouachita Fold Belt to the east, the southern Oklahoma Aulacogen (Fault Zone) to the north, the eastern edge of the Blaine Aquifer to the west, and where the Permian units are truncated by the Llano Uplift Area to the south. In addition, data analysis will include predevelopment to at least to 2015 or more recent times.

For more information on submitting statement of qualifications, please visit http://www.txsmartbuy.com/sp/580-18-RFQ0079.

PROJECT 2: **Update the groundwater availability model for the southern portion of the Carrizo-Wilcox, Queen City, and Sparta aquifers (Estimated Cost: $850,000).**

Per statute, the Texas Water Development Board (TWDB) is tasked with developing numerical groundwater flow models of the major and minor aquifers in Texas. In addition, the numerical groundwater flow models developed through the Groundwater Availability Modeling (GAM) Program are meant to be "living tools" that can be updated as additional information becomes available, adapted to reflect changing aquifer conditions, or refined to better address the needs and concerns of the groups using them. The last time the groundwater availability model for the southern portion of the Carrizo-Wilcox Aquifer was updated was in 2005 when the Queen City and Sparta aquifers were added onto the existing model.

This project will upgrade the model to MODFLOW-USG, or MODFLOW 6 code. The model grid cells containing streams and rivers in the study area will be refined to better represent groundwater-surface water interactions. The model framework will be verified and documented by analyzing well logs and/or geophysical logs. The existing model framework was designed using a combination of chronostratigraphy, biostratigraphy, and lithostratigraphy. The surfaces for the Sparta Sand (and equivalent Laredo Formation), Weches Formation (and equivalent El Pico Formation), Queen City Sand (and equivalent El Pico Formation), Reklaw Formation (and equivalent Bigford Formation), Carrizo Sand, Upper-, Middle-, and Lower Wilcox shall be tied into and compatible with the lithostratigraphic work done by the TWDB BRACS team (http://www.twdb.texas.gov/innovativewater/bracs/studies/UCP/index.asp). The approach for addressing facies changes, San Marcos Arch, and Rio Grande Embayment will be carefully analyzed and logically implemented into the model design. In addition, model statistics will be analyzed for the unconfined, confined, and the entire model domain. We have implemented three milestone meetings and reviews between the consultant and TWDB staff that will be completed: after framework is done, after the model is designed, and after the model is calibrated. The contract will have three formal contractual deliverables: after the draft conceptual model is done (Chapters 1 and 2 of the report), draft final deliverable, and the final deliverable. At a minimum, the model will be calibrated from 1980 to at least 2015 and the first stress period will be steady-state. The model will be tested to ensure it meets the objectives of the Groundwater Availability Modeling Program. A predictive simulation using the current modeled available groundwater estimates will be run for Groundwater Management Area 13 and the existing desired future conditions will be compared against the values from the updated model. In addition, water budgets per county for the final stress period and for the model domain will be completed and reported, as well as the historical average water budget for each groundwater conservation district per Texas State Water Code, Section 36.1071, Subsection (h).

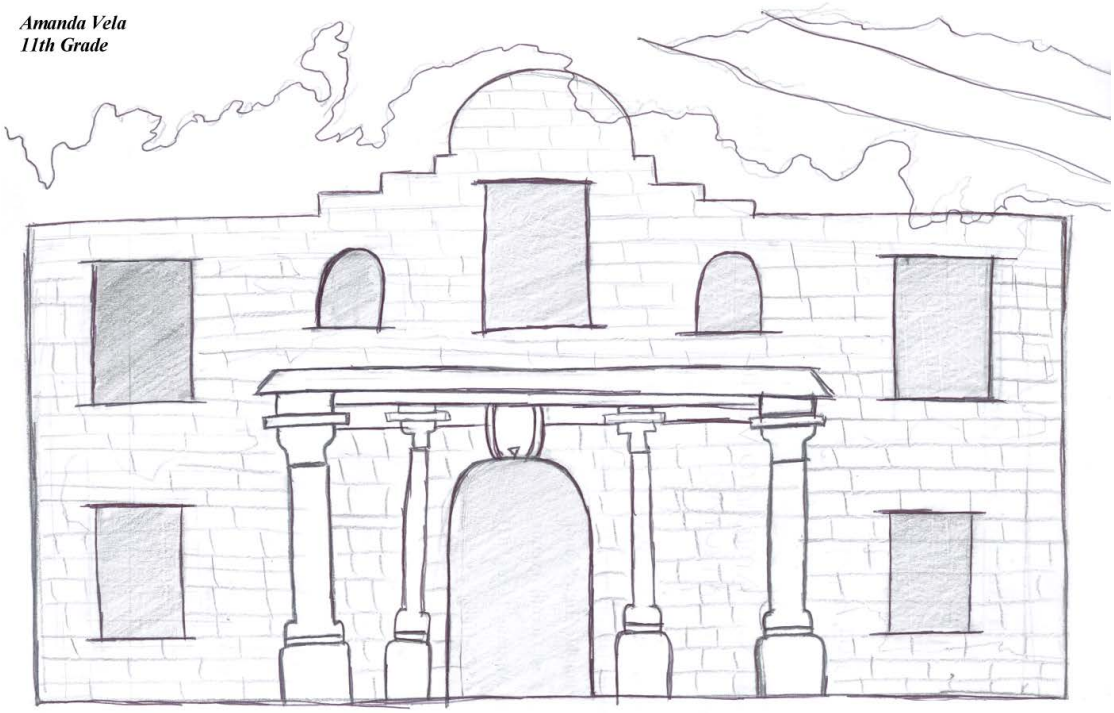
For more information on submitting statement of qualifications, please visit http://www.txsmartbuy.com/sp/RFQ-18-RFQ0077.

TRD-201804863

Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: November 13, 2018

♦ ♦ ♦

Amanda Vela
11th 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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