TEXAS REGISTER

Volume 44 Number 15 *April 12, 2019* *Pages 1797 - 1932*

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

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

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In This Issue

THE GOVERNOR

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

Appointments

Appointment for January 29, 2019

Appointed to the Texas Mutual Insurance Company Board of Directors, for a term to expire July 1, 2023, Ronald E. "Ron" Simmons of Carrollton, Texas (replacing Delia M. Reyes of Dallas whose term expired).

Appointment for January 30, 2019

Appointed as the Director of the Office of State-Federal Relations, for a term to expire at the pleasure of the Governor, Thomas W. "Wes" Hambrick of Houston, Texas (replacing Jerry D. Strickland, II of Austin).

Appointments for February 6, 2019

Appointed as the Commissioner of Insurance, for a term to expire February 1, 2021, Kent C. Sullivan of Austin, Texas (Commissioner Sullivan is being reappointed).

Appointed as the Public Counsel for the Office of Public Insurance Counsel, for a term to expire February 1, 2021, Melissa R. Hamilton of Austin, Texas (Ms. Hamilton is being reappointed).

Appointed as the Executive Commissioner of Health and Human Services, for a term to expire February 1, 2021, Courtney N. Phillips, Ph.D. of Austin, Texas (Commissioner Phillips is being reappointed).

Appointed to the Texas Water Development Board, for a term to expire February 1, 2025, Brooke T. Paup of Austin, Texas (Ms. Paup is being reappointed).

Appointed as the Commissioner of Workers' Compensation, for a term to expire February 1, 2021, Cassandra J. "Cassie" Brown of Austin, Texas (Commissioner Brown is being reappointed).

Appointments for February 7, 2019

Appointed as the Independent Ombudsman for the Texas Juvenile Justice Department, for a term to expire February 1, 2021, Jeffrey D. "JD" Robertson of Wimberley, Texas (Major Robertson is being reappointed).

Appointed as the Nonresident Violator Compact Administrator, for a term to expire February 1, 2021, Amanda A. Arriaga of Austin, Texas (Ms. Arriaga is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2025, Allen D. "D'Wayne" Jernigan of Del Rio, Texas (Sheriff Jernigan is being reappointed).

Appointed to the Board of Pardons and Paroles, for a term to expire February 1, 2025, Carmella T. Jones of Sweeny, Texas (Sheriff Jones is being reappointed).

Appointments for February 8, 2019

Appointed to the Governing Board of the Texas Civil Commitment Office, for a term to expire February 1, 2025, Jose L. Aliseda, Jr. of Beeville, Texas (Mr. Aliseda is being reappointed).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Jennifer L. "Jen" Henderson of Round Rock, Texas (replacing Christopher S. Adams, Jr. of Granbury whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Judy A. Krohn, Ph.D. of Georgetown, Texas (replacing Paul J. Christensen of Crawford whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Traci G. LaChance of Danbury, Texas (replacing Carolyn H. Johnson of Freeport whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Royce Lesley of Comanche, Texas (replacing Roberta J. "Jeanie" Killgore Grant of Salado whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Alan K. Sandersen of Sugar Land, Texas (replacing Robert M. Christian of Jewett whose term expired).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Jarrod D. Smith of Danbury, Texas (Mr. Smith is being reappointed).

Appointed to the Brazos River Authority Board of Directors, for a term to expire February 1, 2023, Roger "Wayne" Wilson, Jr. of Bryan, Texas (replacing Henry W. Munson of Angleton whose term expired).

Appointment for February 11, 2019

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2023, Preston Johnson, Jr. of Sugar Land, Texas (Mr. Johnson is being reappointed).

Appointment for February 12, 2019

Appointed to the State Preservation Board, for a term to expire February 1, 2021, Alethea Swann Bugg of San Antonio, Texas (Ms. Bugg is being reappointed).

Greg Abbott, Governor

TRD-201900974

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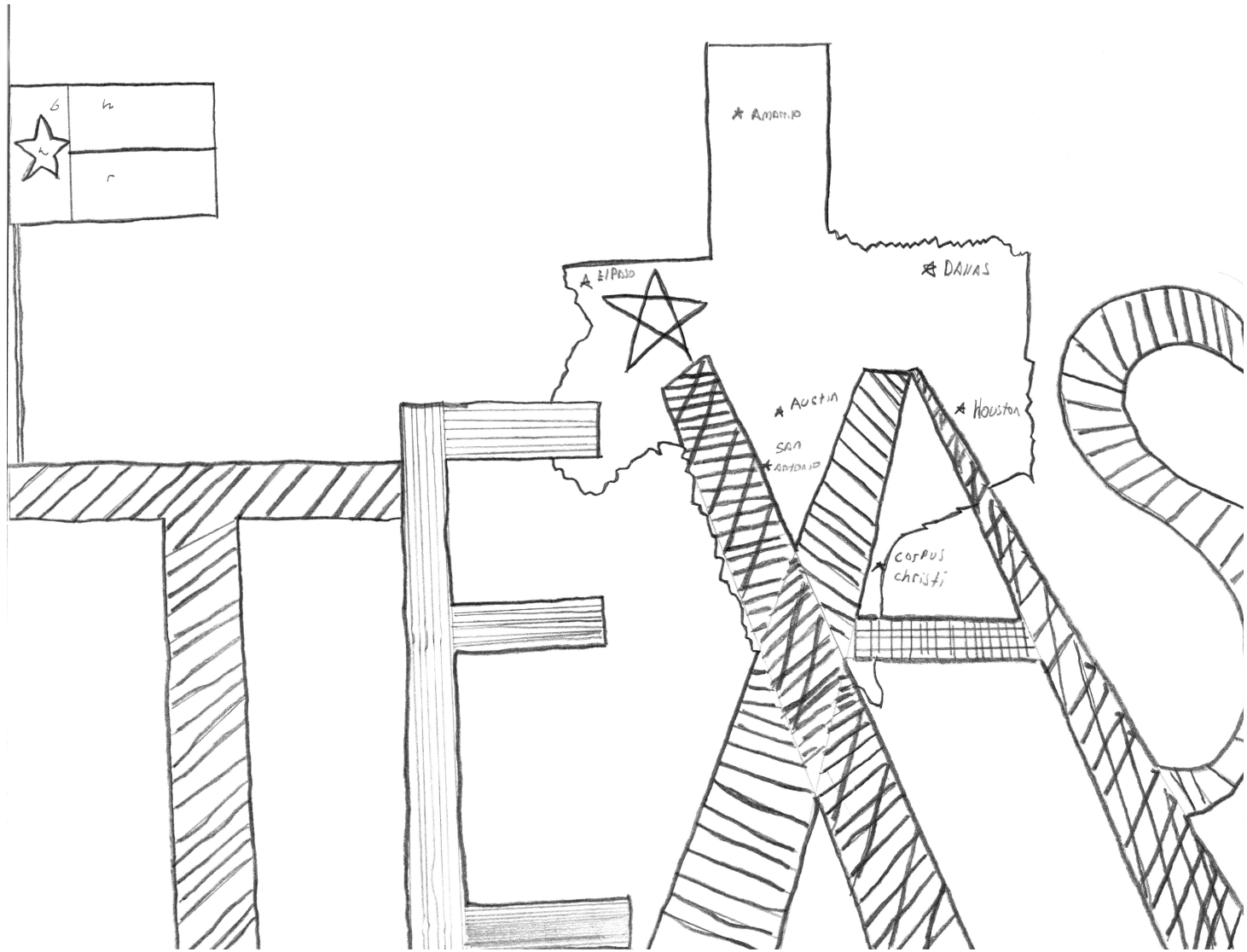
Amarillo
El Paso
Dallas
Austin
Houston
San Antonio
Corpus Christi

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0278-KP

Requestor:

Sherif Zaafran, M.D.

President

Texas Medical Board

Post Office Box 2018

Austin, Texas 78768-2018

Re: Regulatory authority over the administration of anesthesia when delegated by a physician to a nurse anesthetist (RQ-0278-KP)

Briefs requested by April 26, 2019

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

TRD-201900984

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: April 2, 2019

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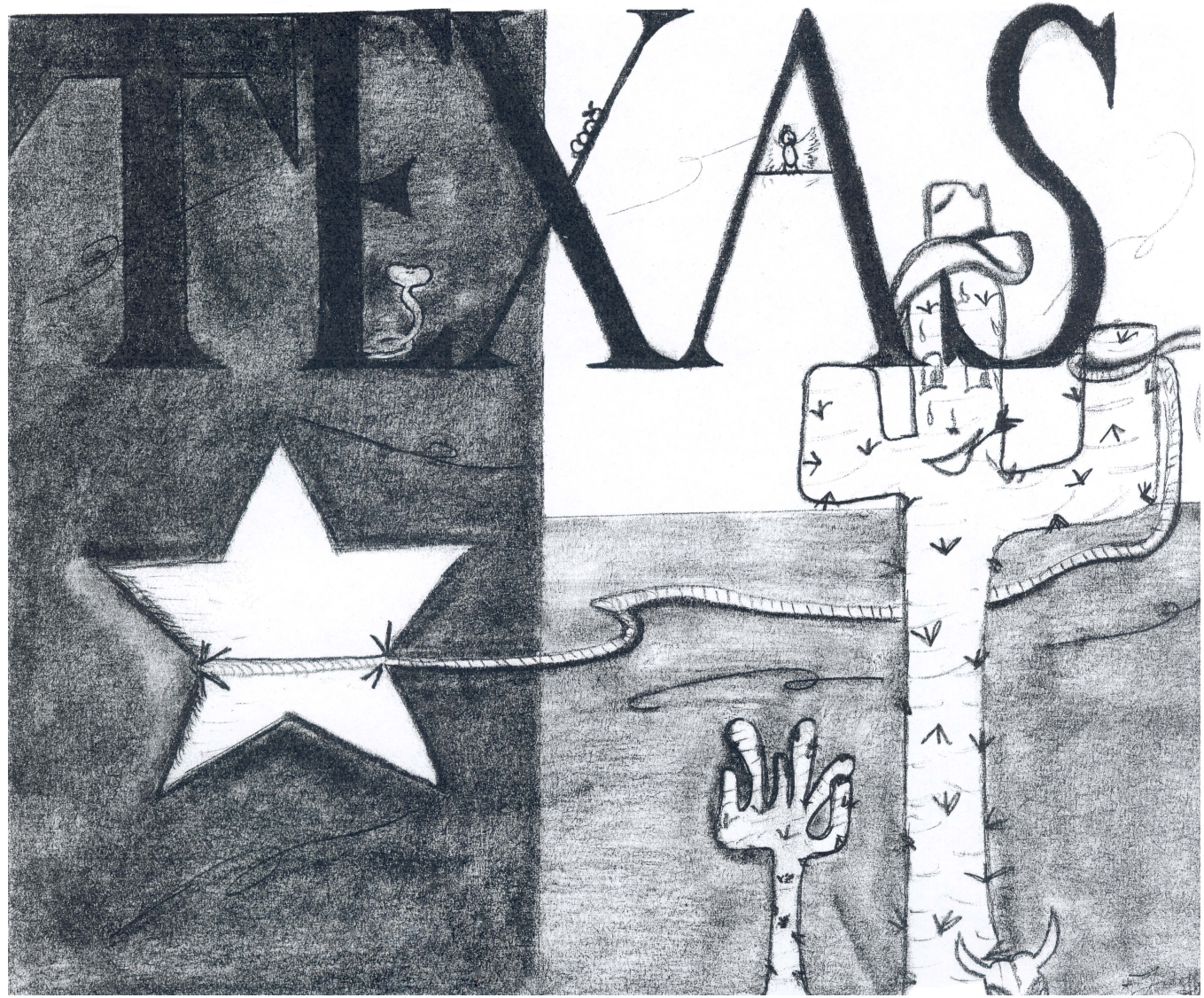
TEXAS

TEXAS ETHICS COMMISSION

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

Ethics Advisory Opinion

EAO-549. Whether the secretary of state is a statewide officeholder for purposes of Title 15 of the Election Code. (SP-16).

SUMMARY

The secretary of state is not a "statewide officeholder" or "holder of a statewide office" for purposes of Title 15 of the Election Code ("Title 15").

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

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

TRD-201900990
Ian Steusloff
Interim Executive Director
Texas Ethics Commission
Filed: April 2, 2019

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EAO-548. Whether an associate judge may wear judicial robes and use the title "associate judge" in political advertising. (SP-15).

SUMMARY

Section 255.006 of the Election Code does not prohibit an associate judge from wearing judicial robes or referring to the judge in political advertising as "Associate Judge, 1000th District Court, Texas County."

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

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

TRD-201901000
Ian Steusloff
Interim Executive Director
Texas Ethics Commission
Filed: April 3, 2019

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TEXAS

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

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

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.8

The Commission on State Emergency Communications (CSEC) proposes for comment amendments to 1 TAC §252.8, Emergency Communications Advisory Committee.

BACKGROUND AND PURPOSE

CSEC proposes amendments to §252.8 (Title 1, Part 12, Texas Administrative Code, Chapter 252) relating to CSEC's Emergency Communications Advisory Committee (ECAC).

SECTION-BY-SECTION EXPLANATION

Section 252.8(a) is amended to reflect CSEC's modified approach toward the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network (ESInet) as authorized and provided in Health and Safety Code §771.0511(b). The primary substantive amendment is to reflect and acknowledge that interconnected, interoperable ESInets providing Next Generation Core Services covering all of Texas constitute the State-level ESInet.

Section 252.8(b) is amended to extend to ECAC CSEC's modified approach to the State-level ESInet, including alignment with CSEC's Next Generation 9-1-1 Master Plan.

Section 252.8(c) is amended to clarify the training, experience, and skills of committee members, and extend the requirements to members representing emergency services other than 9-1-1 services.

Section 252.8(g) is amended to align with CSEC's modified approach to the State-level ESInet, and delete the specific Objectives and Plans required under the prior rule.

Section 252.8(h) is amended to eliminate the reports deleted in subsection (g) and to align ECAC's annual reporting with the state's fiscal year.

Section 252.8(i) is amended for clarification regarding ECAC member legislative activity.

Section 252.8(l) is amended to replace the specific requirements for CSEC staff support with a general statement of support.

Section 252.8(p) is amended to extend ECAC's duration from September 1, 2020, to September 1, 2023.

Section 252.8(q), Definitions of Terms, is deleted in its entirety as no longer necessary given CSEC's modified approach to the State-level ESInet.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §252.8 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended section.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits will come from clarifying the membership, training, roles, and responsibilities of CSEC's Emergency Communications Advisory Committee, whose purpose is to advise and make policy recommendations to CSEC regarding Next Generation 9-1-1 service and, potentially, emergency services other than 9-1-1 services. Ms. Merriweather has also determined that for each year of the first five years the proposed section is in effect there are no probable economic costs to persons required to comply with the section, except for any unreimbursed costs of ECAC members who are not part of CSEC staff; such costs being mitigated if not eliminated by ECAC's use of communications software and technology to avoid in-person meetings.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section §2001.0045(b) applies to the proposed amended rule and no exceptions are applicable. The proposed amended rule does not include a fiscal note imposing or increasing costs on regulated persons, including another state agency, a special district, or a local government. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years the amended rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

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

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being amended affects only the membership, roles, and responsibilities of a CSEC advisory committee. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The amended section is proposed under Health and Safety Code §§771.0511, 771.051(a)(1), (2), (4), (7), (8), (9), (10) and §771.052; and Government Code Chapter 2110.

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

§252.8. Emergency Communications Advisory Committee.

(a) Purpose. The purpose of this rule is to establish an Emergency Communications Advisory Committee (Committee) to assist the Commission in coordinating the development, implementation, interoperability, and internetworking [~~management~~] of [~~an~~] interconnected [~~, state-level~~] emergency services Internet Protocol networks (ESInets) [~~network (State-level ESInet)~~]. Interconnected, interoperable ESInets providing Next Generation Core Services covering all of Texas constitute the State-level ESInet. As defined in Health and Safety Code §771.0511(a)(2), the State-level ESInet is used for communications between and among public safety answering points (PSAPs) and other entities that support or are supported by PSAPs in providing emergency call handling and response, and will be a part of the Texas Next Generation Emergency Communications System.

(b) Policy. It is Commission policy that the development, [~~and~~] implementation , interoperability, interconnection, and internetworking of ESInets [~~the State-level ESInet will~~] be done on a cooperative basis with the state's 9-1-1 Entities. It is Commission policy that the Committee:

(1) advise the Commission on matters regarding the interoperability and interconnection of ESInets, specifically including but not limited to Statewide Interoperability & Standards development for planning for interconnectivity, interoperability, and internetworking of ESInets as reflected in the Commission's Next Generation 9-1-1 Master Plan (Appendix 1 to the Commission Strategic Plan for Statewide 9-1-1 Service for Fiscal Years 20xx-20xx) [~~establishment and management of the State-level ESInet~~]; and

(2) provide for 9-1-1 Entity collaboration on issues regarding ESInets, particularly regarding interoperability and interconnection of ESInets, to ensure [~~the management of the State-level ESInet, collective decision-making, and assurance~~] that the requirements of the state's 9-1-1 [~~91-1~~] Entities are met.

(c) Composition of Committee. Each [~~The Commission shall ensure that each~~] Committee member must have [~~has the~~] appropriate training, experience, and knowledge of Next Generation 9-1-1 technology and services and/or emergency services other than 9-1-1 services to effectively advise the Commission [~~in 9-1-1 systems and network management to assist in the implementation and operation of a complex network~~].

(1) The Committee is appointed by the Commission and includes, at a minimum, the following members:

(A) the Executive Director of the Commission or designee as an ex-officio, non-voting member [~~(The Executive Director or designee may coordinate with and seek input from a county or other entity not otherwise a member of the Committee)~~];

(B) two representatives from the Regional Planning Commissions (RPCs);

(C) two representatives from the Emergency Communication Districts (ECDs), as that term is defined in Health and Safety Code §771.001(3)(A); and

(D) two representatives from the ECDs, as that term is defined in Health and Safety Code §771.001(3)(B).

(2) No two Committee members may be from the same state 9-1-1 [~~911~~] Entity.

(3) The Commission may add to [~~amend~~] the composition of the Committee including members representing [~~to reflect and include~~] emergency services other than 9-1-1 service.

(4) In appointing members to the Committee except under paragraph (3) of this subsection, the Commission shall consult with the RPCs and ECDs. RPCs may designate responsibility for consulting with the Commission to the Texas Association of Regional Councils. ECDs defined in Health and Safety Code §771.001(3)(A) and (B) may designate responsibility for consulting with the Commission to the Municipal Emergency Communication Districts Association and the Texas 9-1-1 Alliance, respectively.

(d) Bylaws. Draft bylaws for approval by the Commission. The bylaws shall, at a minimum, provide for the following:

(1) selection from among the members a presiding officer and an assistant presiding officer whose terms may not exceed two years; and

(2) establish standing committees.

(e) Terms of Office for Voting Members. Each member shall be appointed for a term of 3 years, except for the initial member terms under paragraph (4) of this subsection.

(1) Member terms begin on January 1st.

(2) Members shall continue to serve after the expiration of their term until a replacement member is appointed by the Commission.

(3) If a vacancy occurs, a person shall be appointed by the Commission to serve the unexpired portion of the vacating member's term.

(4) Members serve staggered terms. Initial member terms are as follows:

(A) one member from each 9-1-1 Entity represented on the Committee expires on December 31, 2013; and

(B) one member from each 9-1-1 Entity represented on the Committee expires on December 31, 2014.

(f) Committee Meeting Attendance. Members shall attend scheduled Committee meetings.

(1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.

(2) The Commission may remove a member if it determines that a member cannot discharge the member's duties for a substantial part of the member's appointed term because of illness or disability, is absent from more than half of the Committee meetings during a fiscal year, or is absent from at least three consecutive Committee meetings. The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Committee Roles and Responsibilities. The Committee is to assist the Commission in coordinating the development, implementation, and management of interoperable and interconnected ESInets [~~the State-level ESInet~~]. The Committee will seek state 9-1-1 Entity input and collaboration regarding the interoperability and interconnection of ESInets, specifically including but not limited to Statewide Interoperability & Standards development for planning for interconnectivity, interoperability, and internetworking of ESInets as reflected in the Commission's Next Generation 9-1-1 Master Plan (Appendix 1 to the Commission Strategic Plan for Statewide 9-1-1 Service for Fiscal Years 20xx-20xx). [~~The Committee's roles and responsibilities are based on the functions of the State-level ESInet. The Committee shall, at a minimum, be responsible for the following:~~

~~(1) Objectives.~~

~~(A) Provide guidance and assistance for the monitoring and management of the Texas Next Generation Emergency Communications System.~~

~~(B) Advise the Commission in developing and managing the following:~~

~~*(i)* managed service contracts with vendors;~~

~~*(ii)* professional service contracts with subcontractors;~~

~~*(iii)* Local Service Provider, networks, and application provider interfaces and specifications for State-level ESInet access; and~~

~~*(iv)* interlocal agreements between Regional ESInets and the State-level ESInet to bind both to operating standards and requirements consistent with the delivery of service and protection and management of respective networks, services and applications.~~

~~(2) Plans. As requested by the Commission, the Committee shall advise and make recommendations to the Commission in a plan(s) regarding the coordinated development, implementation, and management of the State-level ESInet.~~]

(h) Reporting to the Commission. The Committee, through its presiding officer, will submit by September 1 of each year, or according to the schedule established by the commission, written reports advising the Commission. The reports shall include the following:

~~[(1) By the date(s) set by the Commission, submit the plan(s) requested by the Commission in subsection (g) of this section.]~~

~~(2) By January 1 of each year, or according to the schedule established by the Commission, submit a report that includes the following:~~

(1) [~~(A)~~] an update on the Committee's work, including:

(A) [~~i~~] Committee and sub- or standing-committee meeting dates;

(B) [~~ii~~] member attendance records;

(C) [~~iii~~] description of actions taken by the Committee;

(D) [~~iv~~] description of how the Committee has accomplished or addressed the tasks and objectives of this section and any other issues assigned to the Committee by the Commission; and

(E) [~~v~~] anticipated future activities of the Committee;

(2) [~~(B)~~] description of the usefulness of the Committee's work; and

(3) [~~(C)~~] statement of costs related to the Committee, including the cost of Commission staff time spent in support of the Committee.

(i) Statement by a Member.

(1) The Commission and the Committee shall not be bound in any way by any statement or action by a member except when the statement or action is in pursuit of specific instructions from the Commission.

(2) The Committee and its members may not participate in legislative activity in the name of the [~~Committee~~] Commission or the Committee without Commission approval [~~except with approval through the Commission's legislative process~~].

(j) Advisory Committee. The Committee is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Government Code, Chapter 551).

(k) Reimbursement for Expenses.

(1) In accordance with the requirements in Government Code, Chapter 2110, a Committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official Committee business if authorized by the General Appropriations Act or budget execution process.

(2) No compensatory per diem shall be paid to Committee members unless required by law.

(3) A Committee member who is an employee of a state agency, other than the Commission, may not receive reimbursement for expenses from the Commission.

(4) A nonmember of the Committee who is appointed to serve on a committee may not receive reimbursement for expenses from the Commission.

(5) Each Committee member whose expenses are reimbursed under this section shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after conclusion of the member's engagement in official Committee business.

(6) Requests for reimbursement of expenses shall be made on official state travel vouchers.

(l) Commission Staff [~~Input and Support~~]. Support for the Committee will be provided by Commission staff. [~~shall:~~]

[~~(1) provide administrative support and input to the Committee;~~

~~(2) with input and recommendations from the Committee, oversee all administrative activities and Commission policies relating to the implementation, operation, and day-to-day management of the State-level ESInet;~~

~~(3) provide administrative support and input to the Committee; and~~

~~(4) provide the Commission with the Committee's plan(s) and report, and a staff report regarding the Committee's advice or policy recommendations.~~]

(m) Applicable law. The Committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(n) Commission Evaluation. The Commission shall annually evaluate the Committee's work, usefulness, and the costs related to the Committee, including the cost of Commission staff time spent supporting the Committee's activities.

(o) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (n) of this section on a biennial basis as part of the Commission's request for appropriations.

(p) Review and Duration. On or before September 1, 2023 [~~2020~~], the Commission will initiate and complete a review of the Committee to determine whether the Committee should be continued or abolished. If the Committee is not continued, it shall be automatically abolished on September 1, 2023 [~~2020~~].

[~~(q) Definitions of Terms. Unless the context clearly indicates otherwise, the following terms are defined as provided in this section.~~

~~(1) Local IP-enabled network. Local internet protocol enabled networks that when interconnected form regional ESInets.~~

~~(2) Regional ESInet. A system of interconnected local IP enabled networks with core functions for emergency services, including but not limited to 9-1-1 service.~~

~~(3) State-level ESInet. Defined in Health and Safety Code §771.0511(a)(2) as a private Internet Protocol network or Virtual Private Network that:~~

~~(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and~~

~~(B) will be a part of the Texas Next Generation Emergency Communications System.~~

~~(4) Texas Next Generation Emergency Communications System. A system of interconnecting regional and State-level ESInets and other emergency services networks such as poison control and radio dispatch.~~

~~(5) Texas NG9-1-1 System. An interconnected and interoperable system of local, regional, and national emergency services networks with advanced capabilities for 9-1-1 call delivery.~~]

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 March 28, 2019.

TRD-201900945
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 305-6915

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 204. FEES

22 TAC §§204.2, 204.4, 204.7

The Texas Funeral Service Commission (Commission) proposes to amend Title 22 Texas Administrative Code, Part 10, §204.2 - Individual Application Fees (Not Refundable); §204.4 - Individual Renewal Fees (Not Refundable); and §204.7 - Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not refundable).

The Commission's fee structure needs to be amended as a result of action by the Department of Information Resources (DIR) as it relates to the surcharge collected in accordance with Tex. Gov. Code Sec. 2054.252. DIR has instructed agencies to comply with the new surcharge amounts by the end of fiscal year 2019. The agency notes the fees paid by licensees either decrease or stay the same under this rule proposal.

FISCAL NOTE: Janice McCoy, Executive Director, has determined for the first five-year period the amendments are in effect there will be no fiscal implication for local governments, or local economies. The state fiscal impact would be to collect the surcharge in accordance with DIR directives. While the rules decrease the surcharge added to the fee, there is no fiscal impact because the agency is recovering the amount required by DIR.

PUBLIC BENEFIT/COST NOTE. Ms. McCoy has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit is that the agency is in compliance with DIR directives related to the collection of the surcharge. There will not be any economic cost to any individuals required to comply with the proposed amendments and there is no anticipated negative impact on local employment because the rule only codifies a DIR directive relating to the surcharge the agency collects.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The agency has determined that there will be no economic effect on small or micro-businesses or rural communities because the rule only codifies a DIR directive relating to a surcharge the agency collects.

GOVERNMENT GROWTH IMPACT STATEMENT. Ms. McCoy also has determined that, for the first five years the amendments would be in effect: 1. The proposed amendments do not create or eliminate a government program; 2. The proposed amendments will not require a change in the number of employees of the Agency; 3. The proposed amendments will not require additional future legislative appropriations; 4. The proposed amendments will not require an increase in fees paid to the Agency; 5. The proposed amendments will not create a new regulation; 6. The proposed amendments will not expand, limit, or repeal an existing regulation; 7. The proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and 8. The proposed amendments will neither positively nor negatively affect this state's economy.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT. Under Government Code §2001.0045, a state agency may not adopt a proposed rule if the fiscal note states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c). The proposed amendments do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government and no new fee is imposed. Therefore, the agency is not required to take any further action under Government Code §2001.0045(c).

TAKINGS AND ENVIRONMENTAL ANALYSIS: The Agency has determined Chapter 2007 of the Texas Government Code does not apply to this proposal because it affects no private real property interests. Accordingly, the Agency is not required to complete a takings impact assessment regarding this proposal. This rule is not a major environmental rule, so an environmental regulatory analysis is not required by Government Code §2001.0225.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at 333 Guadalupe Suite 2-110, Austin, Texas 78701, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.*

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Occupations Code §651.154, which authorizes the agency to adopt fees to administer the chapter. These amendments are also proposed under the authority of Texas Government Code §2054.252(g), which sets out fee amounts the agency must follow for surcharges collected pursuant to this section.

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

§204.2. Individual Application Fees (Not Refundable).

(a) Generally Applicable Application Fees:

(1) Provisional Funeral Director--$93 [~~$95~~] (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $3 [~~$5~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(2) Provisional Embalmer--$93 [~~$95~~] (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $3 [~~$5~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(3) Individual Funeral Director License--$93 [~~$95~~] (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $3 [~~$5~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(4) Individual Embalmer License--$93 [~~$95~~] (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $3 [~~$5~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(b) All license application fees payable to the Commission are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all of the requirements for licensure; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

§204.4. Individual Renewal Fees (Not Refundable).

(a) Renewal Fees:

(1) Provisionally Licensed Funeral Director--$69 [~~$71~~] (includes a $1 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $2 [~~$4~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(2) Provisionally Licensed Embalmer--$69 [~~$71~~] (includes a $1 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $2 [~~$4~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(3) Licensed Funeral Director--$193 [~~$197~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $6 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(4) Licensed Embalmer--$193 [~~$197~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $6 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(5) Licensed Funeral Director and Embalmer (Dual)--$330 [~~$332~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and an $8 [~~a $10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(6) Licensed Funeral Director over the age of 65 or disabled status--$98.50 [~~$104.50~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $4 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(7) Licensed Embalmer over the age of 65 or disabled status--$98.50 [~~$104.50~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $4 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252)

(8) Licensed Funeral Director and Embalmer (Dual) over the age of 65 or disabled status--$168 [~~$172~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $6 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(9) Licensed Funeral Director and/or Embalmer--Inactive Status--$6 [~~$12~~] (includes a $2 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $4 [~~$10~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(b) The renewal fee shall be waived for active military service members as the term is defined by Chapter 55, Occupations Code.

§204.7. Establishment Fees for Funeral Homes, Commercial Embalming Facilities, and Crematories (Not refundable).

(a) New Establishment License Fee--$462 (Includes a $5 surcharge in accordance with Tex. Occ. Code Sec. 101.307).

(b) Establishment Renewal Fee--$537 (includes a $1 surcharge in accordance with Tex. Occ. Code Sec. 101.307 and a $16 [~~$15~~] surcharge in accordance with Tex. Gov. Code Sec. 2054.252).

(c) Establishment Late Penalty (added to renewal fee if more than one day late)--$520 [~~$521~~].

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 March 29, 2019.

TRD-201900964
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 936-2469

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.50

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §133.50, concerning Caregiver Designation, in Texas Administrative Code Title 25, Part 1, Chapter 133, Subchapter C.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 2425, 85th Legislature, Regular Session, 2017, which amended the Texas Health and Safety Code by adding new Chapter 317, regarding Designation of Caregiver for Receipt of Aftercare Instructions.

SECTION-BY-SECTION SUMMARY

Proposed new §133.50 requires that a hospital provide a patient the opportunity to designate a caregiver to receive aftercare instructions on admission or before the patient is discharged or transferred to another facility. Additionally, proposed new §133.50 outlines the hospital's responsibility to document information, in the patient's medical record, regarding the designated caregiver or the patient's declination to designate a caregiver.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

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

(5) the proposed rule will create a new rule;

(6) the proposed rule will expand existing rules (in the sense that those required to comply will be required to do more based on the proposal);

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

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Greta Rymal has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule will require hospitals to provide patients the opportunity to designate a caregiver for aftercare instructions, maintain certain medical record documentation, written authorizations, and discharge plans. HHSC lacks sufficient information to determine if one or more of the 643 licensed hospitals would be considered a small business, micro-business, or rural community.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to this rule.

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved continuity of care and adherence to aftercare instructions that promote healing.

Greta Rymal has also determined that for the first five years the rule is in effect, there are anticipated economic costs to persons who are required to comply with the rule as proposed. Hospitals will be required to collect and maintain certain written documentation which may also require the development of new forms, changes to existing forms, and staff training.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC, Mail Code 1065, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HCQRules@hhsc.state.tx.us. Please specify "Comments on Caregiver Designation Rule" in the subject line.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC adopt rules for the operation and provision of services by the health and human services agencies.

The new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 317.

§133.50. Caregiver Designation.

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

(1) Aftercare--Assistance provided by a designated caregiver to a person after that person's discharge from a hospital, as described by Health and Safety Code, chapter 317, and this section.

(2) Designated caregiver--An individual designated by a patient, including a relative, partner, friend, or neighbor, who:

(A) is at least 18 years of age;

(B) has a significant relationship with the patient; and

(C) will provide aftercare to the patient.

(3) Surrogate decision-maker--An individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

(b) The hospital shall provide a patient who is at least 18 years of age, a patient who is younger than 18 years of age who has had the disabilities of minority removed, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver for receipt of aftercare instructions.

(c) The hospital shall provide the opportunity to designate a caregiver on admission of the patient or before the patient is discharged or transferred to another facility.

(d) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker declines to designate a caregiver, the hospital shall note the fact in the patient's medical record.

(e) If the patient, the patient's legal guardian, or the patient's surrogate decision-maker designates a caregiver, the hospital shall:

(1) document in the patient's medical record the designated caregiver's name, telephone number, address, and relationship to the patient; and

(2) request written authorization to disclose health care information to the designated caregiver.

(f) If written authorization to disclose health care information to the designated caregiver is obtained, the hospital shall:

(1) as soon as possible before the patient's discharge or transfer, notify the designated caregiver of this fact;

(2) if the hospital is unable to contact the designated caregiver before the patient's discharge or transfer, note this in the patient's medical record;

(3) before the patient's discharge, provide the designated caregiver a written discharge plan that describes the patient's aftercare needs that includes:

(A) the designated caregiver's name, contact information, and relationship to the patient;

(B) a description of the aftercare tasks that the patient requires, written in a culturally competent manner; and

(C) the contact information for any health care resources necessary to meet the patient's aftercare needs;

(4) before the patient's discharge to any setting in which health care services are not regularly provided to others, provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

(g) The patient, the patient's legal guardian, or the patient's surrogate decision-maker may change the designated caregiver at any time and the hospital shall note the change in the patient's medical record.

(h) This section may not be construed to interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge or transfer of the patient.

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 March 29, 2019.

TRD-201900965
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 834-6651

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.119

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §7.119, concerning Memorandum of Understanding Between the Texas

Department of Transportation and the Texas Commission on Environmental Quality.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to adopt by reference updates to the commission's memorandum of understanding (MOU) with the Texas Department of Transportation (TxDOT) regarding TCEQ environmental reviews of TxDOT highway (transportation) projects. The updates are required to implement the following statutes and legislation.

Texas Transportation Code, §201.607(a) requires TxDOT and each state agency that is responsible for the protection of the natural environment, which includes the TCEQ, to revise their MOU that relates to the review of the potential environmental effect of a highway project. Texas Transportation Code, §201.607(b) requires TxDOT and the TCEQ to adopt, by rule, all revisions to the MOU. TxDOT and the TCEQ have negotiated updated MOU language. TxDOT adopted the updated MOU in 43 TAC Chapter 2, Subchapter I. This rulemaking adopts by reference 43 TAC §§2.301 - 2.308.

Section Discussion

§7.119, Memorandum of Understanding Between the Texas Department of Transportation and the Texas Commission on Environmental Quality

The commission proposes to amend §7.119 to reflect the most recent date TxDOT adopted its rule governing the MOU.

TxDOT repealed and simultaneously replaced its rules governing the MOU between TxDOT and TCEQ to better explain both agencies' responsibilities. The changes include modifications to the triggers for coordination, the methods of coordination, and the required content for environmental review documents. The changes simplify and clarify both agencies' obligations under the coordination process.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The rulemaking is proposed in order to comply with the Texas Transportation Code, §201.607(a). The law requires the TCEQ, as an agency charged with environmental responsibilities, to enter into an MOU with the Texas Department of Transportation relating to the environmental effect of a highway project. This proposed rule adopts the MOU by reference which simplifies the coordination process between the two agencies.

Public Benefits and Costs

Ms. Bearse has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state law.

The proposed rule is not expected to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does it increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking will add the effective date of TxDOT's rules governing the MOU between TxDOT and TCEQ. The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a state agency's adoption of a major environmental

rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking does not exceed a standard set by federal law; rather, it addresses the process for environmental review performed by the TCEQ for TxDOT, as mandated under state law. Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under Texas Transportation Code, §201.607, which requires TxDOT and the TCEQ to update their MOU. Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to add the effective date of the current MOU between TxDOT and TCEQ. This rule will not constitute either a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in the Coastal Coordination Act implementation rules, 30 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on May 9, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-6812 or 1 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-008-007-LS. The comment period closes on May 13, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Office of Legal Services, Environmental Law Division, at (512) 239-3417.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; Texas Health and Safety Code, §382.035, Memorandum of Understanding, which requires the commission to adopt, by rule, any memorandum of understanding (MOU) between the commission and another state agency in relation to the Texas Clean Air Act; and Texas Transportation Code, §201.607, Environmental, Historical, or Archeological Memorandum of Understanding, which requires the Texas Department of Transportation and the TCEQ to examine and revise their MOU relating to the TCEQ review of highway projects for potential environmental effects.

The proposed amendment implements requirements in Texas Transportation Code, §201.607.

§7.119. Memorandum of Understanding Between the Texas Department of Transportation and the Texas Commission on Environmental Quality.

The commission adopts by reference the rules of the Texas Department of Transportation in 43 TAC §§2.301 - 2.308 (relating to Memorandum of Understanding with the Texas Commission on Environmental Quality) effective March 20, 2019.

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 March 29, 2019.

TRD-201900962
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 239-6812

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

The Commissioner of the General Land Office (Commissioner and GLO) proposes the repeal of §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and §15.42, relating to Funding Projects from the Coastal Erosion Response Account. Sections 15.41 and 15.42 are proposed for repeal to reorganize, streamline, and clarify the same subject matter under proposed new §15.41 and §15.42. The GLO also proposes amendments to §15.44, relating to Beneficial Use of Dredged Materials, to update and clarify the rules.

BACKGROUND

The purpose of the Coastal Erosion Planning and Response Act, Texas Natural Resources Code Sections 33.601 - 33.613 (CEPRA), is to implement coastal erosion response projects, demonstration projects, and related studies to reduce the effects of coastal erosion and to understand the process of coastal erosion as it continues to threaten public beaches, natural resources, coastal development, public infrastructure, and public and private property. Under CEPRA, the GLO expends funds to support these projects. The GLO implements these projects and studies through collaboration and cost sharing partnerships with federal, state, and local governments, non-profit organizations, other entities and individuals.

CEPRA funds are appropriated by the Legislature on a two-year cycle that coincides with the Legislative biennium. The funds are awarded to qualified project partners through a competitive application process in which all Coastal Resources Funding Applications (Applications) are evaluated and scored by the GLO's CEPRA team. Selected projects are approved by the Commissioner.

The proposed new sections and amendments are necessary to update, reorganize, and streamline §§15.41, 15.42, and 15.44 to increase transparency and clarify the GLO's review and evaluation process for Applications. The changes modify the Application process to better reflect the GLO's process for selecting and developing final coastal erosion studies and projects for funding from the coastal erosion response account (Account).

SECTION-BY-SECTION DISCUSSION

Section 15.41, relating to the Evaluation Process for Coastal Erosion Studies and Projects, is proposed for repeal and in its place the GLO proposes a new §15.41 which reorganizes, streamlines, and clarifies the rules addressing the same subject matter.

Proposed new §15.41, relating to the Evaluation Process for Coastal Erosion Studies and Projects, outlines the Coastal Resources Funding Application (Applications) review and evaluation process for entities seeking funding for projects from the CEPRA Account.

Proposed new §15.41(a) generally describes how the GLO will conduct evaluations of Applications for coastal erosion studies and projects. It also describes the GLO's process for determining which qualifying projects will be selected as a priority project for funding. The subsection also describes the GLO's goal to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address identified erosion problems in the Application. Most of the review and evaluation process remains the same in the proposed new subsection, but the process has been streamlined to make the rule simpler and the evaluation process more transparent. Differences between the repealed rules and this proposed rule include removing the description of a "two-stage evaluation process", replacing the reference to "project goal summaries" with "Coastal Resources Funding Application(s)" or "Application(s)", and updating the term "Land Office" to "GLO". Proposed new §15.41(a) also deletes the reference to "preferred alternatives" and replaces this terminology to refer to "preferred erosion response solutions". A definition is also added for preferred erosion response solutions. Minor edits are made to improve readability, consistency, and to reorganize the section. The proposed new subsection is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(1) establishes a presumption of erosion, which helps establish factors that will be considered for purposes of determining whether an area can be presumed eroding for purposes of qualifying for CEPRA funds. The original language addressing what qualifies as eroding was originally located in §15.44(b) and was based on a determination of the rate of erosion. This language has been incorporated into paragraph (a)(1) and has been expanded because it did not adequately address how GLO would evaluate erosion in the bays and other areas where erosion rates are not regularly tracked. The new language in this subsection provides that erosion is presumed if: a portion of the gulf shoreline is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology; a portion of the bay area is experiencing documented erosion; a portion of the gulf shoreline or bay area has been the subject of an erosion response project and it has been determined that maintenance is required; or a portion of the gulf shoreline or bay area has been impacted by a storm event and remediation is required to reestablish the preexisting conditions of the site. Proposed new §15.41(a)(1) is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(2) requires a potential project partner seeking funding from the Account to submit an Application to the GLO by the GLO's established submission deadline. The original rule required submission of the "project goal summary to the Land Office no later than July 1 immediately preceding the state fiscal biennium in which funding is sought." The term "project goal summary" has been changed to "Application". The submission deadline date in the proposed rule now allows for more flexibility if the date needs to be adjusted in the future. The Application submission deadline will however be identified in the Coastal Resources Funding Application, on the GLO's CEPRA website, and in the CEPRA guidance document. Additional modifications include relocating language concerning emergency situations to proposed new §15.41(b) for better subject-matter organization. Proposed new §15.41(a)(2) is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(2)(A) outlines the information that must be included in the Application to be considered complete. Only submitted Applications that include the requested information set out in §15.41(a)(2)(A)(i) - (xvii) will be deemed complete by the GLO and considered for funding from the Account. The

proposed subparagraph includes most of the same information sought in the original rule but relocates the requirement to submit "a description of an emergency situation the project is intended to address" to proposed new §15.41(b) for better subject-matter organization. A requirement concerning submission of information on "whether a sand source has been identified by the potential project partner for a beach nourishment project" has been deleted because this information is easily obtained through other sources. Additional modifications include clarifying language in proposed new §15.41(a)(2)(A)(ix) which requires information about, "whether any potential or committed sources of funding, other than from the Account, will be provided with a description of the total contribution amount and estimated percentage of the project to be funded". Proposed new §15.41(a)(2)(A)(xii) and (xiii) add two requirements for submission regarding "the feasibility and cost-effectiveness of the project" and "the economic impacts of erosion in the area of the project". These are included in the Application because they are general requirements that are considered by the GLO during the evaluation process. Proposed new §15.41(a)(2)(A)(xiv) also adds clarifying language seeking "identification of the project category for which funding is sought from the Account and a description of the partners proposed cost share." Proposed new §15.41(a)(2)(A)(xiv)(I) adds a definition of "beach nourishment and associated enhancements" and is defined as "activities that include direct placement of beach quality sand to create or maintain a beach. It also includes associated construction or enhancements to the dune system". The proposed new subclause also explains that the shared project cost of the Applicant must be at least 25 percent "if the project includes a beach nourishment and associated enhancements project on a public beach or bay shore". In proposed new §15.41(a)(2)(A)(xiv)(II), new language explains that the shared project cost of the Applicant must be at least 40 percent "if the project includes a marsh restoration project, a bay shoreline protection project other than a beach nourishment and associated enhancements project, or any other coastal erosion response study or project". Proposed new §15.41(a)(2)(A)(xv) requires an Applicant to provide information on "whether there is a permit associated with the project". Additional minor edits are made for clarification, consistency, and overall organization.

Proposed new §15.41(a)(2)(B) lists the general requirements that GLO will consider when evaluating received Applications. In the original rule, the GLO evaluated the Application based on a set of "criteria". Proposed new §15.41(a)(2)(B) replaces the term "criteria" with "general requirements" to make a clearer distinction between the evaluation of the initial review of "general requirements" and subsequent evaluation of "priority criteria". Proposed new §15.41(a)(2)(B)(iii) adds the terms "public property", "private property", and "Coastal Natural Resource Areas," as defined by 31 Texas Administrative Code, Section 501. This clarifies that the GLO will evaluate each project on its effect "on public property, public infrastructure, private property, or coastal natural resource areas threatened by erosion". Additional minor edits delete outdated GLO contact information and a reference to the abolished Coastal Coordination Council. The GLO's current contact information will be available to the public via the GLO's CEPRA website and the Coastal Resources Funding Application.

Proposed new §15.41(a)(2)(C) concerns an evaluation of the priority of proposed projects based on priority criteria after the evaluation of the general requirements is completed. In the original rule, the priority criteria required GLO to consider "whether the proposed project will address an emergency erosion situation in the area". This provision has been relocated to §15.41(b) for better subject-matter organization. Proposed new §15.41(a)(2)(C)(ii) adds a for the GLO's consideration "whether the project will enhance community resiliency". This new provision is in conformance with Texas Natural Resources Code, §33.602(c). Minor revisions are also made for consistency and clarity.

Proposed new §15.41(a)(2)(D) describes the process for GLO's designation of projects as either priority or alternate projects. The process for designating projects remains mostly the same with minor edits for consistency, clarification, and reorganization. The original rule discussed the designation of projects as either a "priority" or "alternative" project. The term "alternative" is replaced with "alternate" in the proposed rule. The designation of a priority project or alternate project will continue to depend on the outcome of the GLO's evaluations under the proposed rule and availability of funding. Language is also added in proposed new §15.41(a)(2)(D)(ii) that provides "if the GLO's evaluation results in a designation of a project as a priority project, the GLO will enter into a project cooperation agreement with the qualified project partner." This language is substantially similar to language found in §15.41(a)(1) and (2) of the original rule.

Proposed new §15.41(a)(2)(E) requires project cooperation agreements to explicitly define all activities and responsibilities for undertaking a priority project between the GLO and a qualified project partner as set out in proposed §15.42. This language is substantially similar to language found in §15.41(a)(2) of the original rule. The new proposed subparagraph is in conformance with Texas Natural Resources Code, §§33.601(9) and 33.602(c).

Proposed new §15.41(a)(3) notes that "as appropriate, the GLO may request the applicant to work cooperatively or participate in a further review to identify and select a preferred erosion response solution to address any erosion problem(s) identified in the Application". The proposed new subparagraph also explains that the preferred erosion response solution may be determined by the GLO through the evaluation of an alternatives analysis and feasibility study, which may include modeling and consideration of long-term results of various methods of design. GLO will select the best erosion response solution to accomplish the goals in the Application based on the alternatives analysis and feasibility study. The term "preferred erosion response solution" replaces the previous reference in the original rule from "preferred alternatives" and should provide more clarity. Aside from the new terminology the process remains the same as the original rule. The proposed new paragraph is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(3)(A) provides that the GLO will evaluate projects on the priority criteria of whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project and whether the feasibility and cost-effectiveness of the preferred erosion response solution is meeting the objectives stated in the Application. The proposed new subparagraph is consistent with the §15.41(a)(1)(D) original rule and includes minor edits to streamline and organize the rule.

Proposed new §15.41(a)(3)(B) adds new language to the subparagraph to clarify that the GLO may, at its sole discretion, fund studies or activities that evaluate erosion, identify preferred erosion response solutions, or fund projects that investigate methods to help identify and enhance community resiliency strate-

gies. Minor edits are made for consistency and clarity. This is in conformance with Texas Natural Resources Code, §33.602(c).

Proposed new §15.41(a)(3)(C) generally addresses how the GLO will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of a preferred erosion response solution under §15.41(a)(3)(A). The proposed new subparagraph is almost the same as the original rule but deletes the terms "potential or" and "alternatives". The term "alternatives" is replaced with the phrase "preferred erosion response solution" to clarify the rule. Minor edits are also made to organize and update citations.

Proposed new §15.41(a)(3)(D) provides "that each state fiscal biennium the GLO may determine that at least one project designated as a priority project may be undertaken by the GLO without requiring a qualified project partner to provide a portion of the shared project cost." See, Texas Natural Resources Code, §33.603(f). The subparagraph also provides for "GLO to consider whether to fund erosion response projects without a cost share requirement. For projects without a cost share requirement, GLO will consider whether the total cost of the projects that are approved under this section exceeds one-half of the total amount appropriated to the GLO for coastal erosion planning and response for the state fiscal biennium in which funding is sought, the relative amount of funding available to the qualified project partner from sources other than the Account, and the potential impact of the projects on coastal erosion in relation to the total estimated cost of the projects." Most of the proposed new subparagraph is the same as the original rule but includes minor edits for clarification, consistency, and organization.

Proposed new §15.41(b) concerns how the GLO may use §15.41(a) criteria to select a project for funding that will address an emergency situation. Similar to the original rule, the proposed new subsection provides that the GLO may accept an Application for an emergency project at any time during the state fiscal biennium. Applications must include a description of the area that is immediately threatened or impacted by erosion and whether the emergency erosion project will address or resolve the identified erosion problem. All emergency related project funding references in §15.41(a) have been moved to §15.41(b) for better subject matter organization. This new subsection is authorized under Texas Natural Resources Code, §33.602(c).

§15.42, relating to Funding Projects From the Coastal Erosion Response Account

Section 15.42, relating to Funding Projects From the Coastal Erosion Response Account, is proposed for repeal in order to reorganize, streamline, and clarify the rules and add information under proposed new §15.42 concerning the same subject matter.

Proposed new §15.42, relating to Funding Projects From the Coastal Erosion Response Account, clarifies the criteria and process for qualified project partners to obtain priority project funding from the coastal erosion response account (Account). The proposed new subsection reflects the same content and process as the original rule, but the section is reorganized, and additional information is added to clarify the rules. As a result, the subsections are re-lettered throughout this subsection and minor edits are made to improve readability and consistency. The term "GLO" replaces "Land Office" throughout the section. The term "priority" is also added in the subsection to clarify that funding considerations are for priority projects.

Proposed new §15.42(a) generally addresses the process for obtaining funding for priority projects under the Account and requires a project cooperation agreement to be executed between the GLO and a qualified project partner. It also requires "a project cooperation agreement to explicitly define the terms and conditions under which the GLO will fund the project". The original rule requires changes in funding from the Account to be reflected in an amended project cooperation agreement. This requirement is deleted from subsection (a) and incorporated into proposed new §15.42(d). The proposed new subsection is in conformance with Texas Natural Resources Code, §§33.602(c) and 33.603(c)(2).

Proposed new §15.42(b) requires that a project cooperation agreement must provide for management of the project by either the GLO or by the qualified project partner. The subsection further provides GLO the sole discretion to decide whether the project will be managed by the GLO, with payment to the GLO by the qualified project partner of the required percentage of the shared project cost from the Account. Alternatively, the GLO may allow the project to be managed by the qualified project partner with reimbursement from the Account to the qualified project partner for project expenses for work completed in the amount provided in the project cooperation agreement. Most of the proposed new subsection reflects the same subject matter and process as the original rules but includes minor edits for consistency and clarification.

Proposed new §15.42(c) expands and clarifies that a project cooperation agreement must "include the terms of the qualified project partner's commitment to provide the required percentage of the shared project cost from the Account, provide the total project budget to the extent this it is known, and identify the funding sources and the amounts that will be used as a partner's cost share or the basis of in-kind services that will be used to offset the authorizations that have been obtained or will be required to construct the project," as specified in subsection (j). This new subsection is consistent with the original rule but incorporates §15.42(g) from the original rule into this subsection for better organization. The subject matter previously located in §15.42(c) is incorporated into proposed new §15.41(e) for better organization.

Proposed new §15.42(d) concerns the requirements for amending a project cooperation agreement to reflect changes to priority project terms or funding from the Account. This provision is consistent with the original rule but was relocated from §15.41(a) into this subsection for reorganization of the section. The original rule provisions in §15.41(d) are now reflected in §15.41(f).

Proposed new §15.42(e) fully describes the cost share requirements for CEPRA projects that are originally referenced to in the description of the application in §15.41(a) and includes the following examples of the types of projects that will require a 40% shared project cost from the Applicant: (A) a marsh restoration or enhancement project; or (B) a bay shoreline protection project other than a beach nourishment project." The required minimum specified percentage for a qualified project partner is the same as the original rule, but the information was previously located in §15.42(c). Proposed new §15.42(e)(1) adds the phrase "and associated enhancements" after the term beach nourishment. Beach nourishment and associated enhancements are defined in proposed new §15.41(a)(2)(A)(xiv)(I). Proposed new §15.42(e)(2) adds clarifying language by replacing the term "including" with the phrase "and includes the following examples:". Additionally, proposed new §15.42(e)(2)(A) adds the description "or enhancement" after the term marsh restoration.

Proposed new §15.42(f) provides that "the state's portion of the shared project cost for erosion response demonstration projects undertaken or funded pursuant to Texas Natural Resources Code §33.603(g) is limited to one-tenth of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium for which funding is sought." This proposed new subsection is the same as the original rule, but the information was previously located in §15.42(d).

Proposed new §15.42(g) fully describes the limited authority of the GLO to fund a project without the required shared project cost which is first referenced to in the description of the application in §15.41(a). It provides that "the GLO may, pursuant to Texas Natural Resources Code §33.603(f), undertake at least one erosion response project each biennium without requiring a qualified project partner to provide a portion of the shared project cost if the total cost of projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium." This proposed new subsection is the same as the original rule but was previously located in §15.42(e).

Proposed new §15.42(h) provides that "the GLO may determine the percentage of the shared project cost a qualified project partner must provide for a project undertaken pursuant to Texas Natural Resources Code §33.603(b)(11), (12), or (13) for the removal of debris, removal and relocation of structures from the public beach through reimbursement of expenses or purchase of property, and the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter." This proposed new subsection is identical to the original rule but was previously located in §15.42(f).

Proposed new §15.42(i) prohibits "costs incurred by a potential project partner, before becoming a qualified project partner, to be used for offsetting the cost-sharing requirement from the Account." This proposed new subsection is identical to the original rule but was previously located in §15.42(h).

Proposed new §15.42(j) allows a qualified project partner to provide in-kind goods or services after entering into a project cooperation agreement with the GLO. A qualified project partner may offset the shared project cost if the GLO is provided with a reasonable basis for estimating the monetary value of those goods or services. The GLO has sole discretion on whether to allow any in-kind goods or services to offset the cost-sharing requirement. The project cooperation agreement must reflect any in-kind goods or services approved by the GLO. This proposed new subsection contains the same subject matter in the original rule but was previously located in §15.42(i).

Proposed new §15.42(k) provides "that local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the cost-sharing requirement." This proposed new subsection is identical to the original rule but was previously located in §15.42(j).

§15.44, relating to Beneficial Use of Dredged Materials

The proposed amendments to §15.44 revise and update the section by replacing the term "Land Office" with "GLO" throughout the section, delete and relocate §15.44(b) into proposed new §15.41(a)(1), delete outdated reference citations to publication materials by the U.S. Army Corp of Engineers, and delete information pertaining to GLO's outdated mailing address for requesting copies of publications. Conforming letter changes are made throughout the section to address the deletion of §15.44(b). The proposed amendments are in conformance with Texas Natural Resources Code, §33.602(c) and (d).

The proposed amendments to §15.44(a) make minor revisions to this subsection to delete language, update references, and clarify the subsection. In the first sentence the following terms are deleted: "used", "eroding", "wherever practicable", and "Land Office". The following terms are added for clarification in the first sentence "Account", "or to benefit," "areas", "or create", and "to mitigate erosion". As revised, the first sentence states "If a project receives funds from the coastal erosion response account (Account), material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on, or used to benefit, eroding beach areas or to restore or create wetlands to mitigate erosion."

The proposed amendments to §15.44(b) delete the subsection and delete the following text: "A portion of the shoreline which is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology, is considered an eroding area for the purposes of this subchapter." This subsection is relocated to proposed new §15.41(a)(1) which expands upon the presumption of erosion to better address areas that are not immediately adjacent to the Gulf. Conforming letter changes are made throughout the section to address the removal of this subsection. Section 15.44(c) is converted to §15.44(b). The following new terms are also added to clarify the subsection "or used to benefit, eroding", "areas", and "to create".

The proposed amendments to §15.44(c) re-letter§15.44(d) to §15.44(c). The proposed amendments in this subsection delete outdated citations to the U.S. Army Corps of Engineers publications that are used as guidance materials by the GLO for determining the suitability and practicality of dredged material for beach placement. The proposed amendments also delete the GLO's outdated mailing address and corresponding language for requesting copies of the publications from the GLO. The GLO is removing this information because the relevant guidance materials are available to the public online at the U.S. Army Corps of Engineers website. New language is added to the subsection clarifying that the "GLO" may refer to the guidance "materials" "by the" U.S. Army Corps of Engineers, "relating to" Engineering & Design, Beneficial Uses of Dredged Materials, "Coastal Engineering, and Beach Fill Design."

The proposed amendment to §15.44(d) would re-letter §15.44(e) to §15.44(d) due to conforming letter changes. There are no other changes to this subsection.

The proposed amendments to §15.44(e) would re-letter §15.44(f) to §15.44(e) due to conforming letter changes. The proposed amendments remove outdated references to the U.S. Army Corps of Engineers publications used for guidance materials in determining the suitability and practicality of dredged material for beach placement and remove the GLO's outdated mailing address for requesting copies of the publications from the GLO because the publications are easily accessed online by the public. New language is added to the subsection to clarify the "GLO" may refer to the guidance "materials" "by the" U.S. Army Corps of Engineers, "relating to" Engineering & Design, Beneficial Uses of Dredged Materials".

The proposed amendments, to §15.44(f) would re-letter §15.44(g) to §15.44(f) due to conforming letter changes. The following language is removed because it is no longer necessary "after the effective date of this section."

FISCAL AND EMPLOYMENT IMPACTS

David Green, Deputy Director, Coastal Resources, has determined that for each year of the first five years the proposed new and amended rules are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the rules contained in §§15.41, 15.42, and 15.44.

Mr. Green has determined that for each year of the first five years the proposed new and amended rules are in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the rules.

Mr. Green has also determined that the proposed rulemaking will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals because the rulemaking relates solely to administrative functions of the Commissioner and the GLO.

Mr. Green has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Green has determined that for each year of the first five-year period the proposed new and amended rules are in effect, the public will benefit from the rules because the Commissioner and the GLO recognize that public beaches, bays, and estuaries support the economy of cities and counties along the Texas Gulf Coast. Coastal erosion response projects funded under these rules will benefit the public in that public beaches, public coastal property, and coastal natural resources will be preserved, enhanced, or restored, and losses of public and private resources and infrastructure will be reduced. The proposed amendments concerning guidelines for evaluating beneficial use of dredged material will continue to enable the GLO and qualified project partners to obtain material necessary to nourish and maintain beaches or restore wetlands at a relatively low cost, while at the same time preserving the quality and character of beaches or wetlands. The proposed new and amended rules will also improve the public's understanding of coastal erosion response projects funded under the rules and benefit the public through improved certainty and clarity in the rules.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO has evaluated the proposed rulemaking in accordance with Government Code, §2001.0221. The GLO has determined that for the first five-year period the proposed new and amended rules are in effect, the rules would not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; increase or decrease the number of individuals subject to applicability of the rules; or positively or adversely affect the state's economy. The proposed rulemaking would also not expand or limit existing regulations, but would repeal §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and §15.42, relating to Funding Projects From the Coastal Erosion Response Account, and contemporaneously create new §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, and new §15.42, relating to Funding Projects From the Coastal Erosion Response Account. The repeal of existing §15.41 and §15.42 and creation of new §15.41 and §15.42 allows the rules to be reorganized and streamlined resulting in improved clarity and transparency in the rules.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

COASTAL MANAGEMENT PROGRAM ANALYSIS

The proposed new rule sections and amendments are not subject to the Texas Coastal Management Program (CMP), Texas Natural Resources Code §33.2053 and 31 Texas Administrative Code §505.11(a)(1), relating to Actions and Rules Subject to the Coastal Management Program. Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send written comments to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to Walter.Talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

31 TAC §15.41, §15.42

STATUTORY AUTHORITY

The repeals are proposed under the Texas Natural Resources Code, §33.602(c), which provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement

Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion.

§15.41. Evaluation Process for Coastal Erosion Studies and Projects.

§15.42. Funding Projects From the Coastal Erosion Response Account.

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 March 29, 2019.

TRD-201900956

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: May 12, 2019

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

♦ ♦ ♦

31 TAC §§15.41, 15.42, 15.44

STATUTORY AUTHORITY

The new rule sections and amendments are proposed under the Texas Natural Resources Code, §33.602(c), which provides the Commissioner of the GLO with the authority to adopt rules as necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H, concerning coastal erosion; and Texas Natural Resources Code §33.602(d), which authorizes the Commissioner of the GLO to adopt rules providing for beneficial use of dredged material.

The proposed new sections and amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter H.

Texas Natural Resources Code §§33.601 through 33.605 are affected by the proposed rulemaking.

§15.41. Evaluation Process for Coastal Erosion Studies and Projects.

(a) The General Land Office (GLO) will conduct an evaluation of potential coastal erosion studies and projects to designate funding for qualifying projects from the coastal erosion response account (Account). The evaluation process will consist of a review by the GLO of Coastal Resources Funding Application (Applications) to identify priority projects for funding. Throughout the evaluation process, the goal of the GLO is to work cooperatively with qualified project partners to identify and select preferred erosion response solutions to address erosion problems identified in the Applications.

(1) For purposes of this section, erosion is presumed if:

(A) a portion of the Gulf of Mexico (Gulf) shoreline is experiencing a historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology;

(B) a portion of the bay area is experiencing documented erosion;

(C) a portion of the gulf shoreline or bay area has been the subject of an erosion response project and it has been determined that maintenance is required; or

(D) a portion of the gulf shoreline or bay area has been impacted by a storm event and remediation is required to reestablish the preexisting conditions of the site.

(2) To be considered for funding under the Account, a potential project partner must submit an Application to the GLO by the GLO's established submission deadline.

(A) The submitted Application must include the following information to be considered complete:

(i) the name of the entity that will be the potential project partner and the name, mailing address, email address, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the GLO;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) a description of the project or study and how the project or study will lessen the negative economic impacts of the erosion problem;

(v) a description of how the project or study will benefit the public infrastructure, and coastal property that has been impacted or threatened by erosion;

(vi) a description of the natural resources impacted or threatened by erosion in the area;

(vii) the estimated cost to complete the project or study;

(viii) whether the project will incorporate the beneficial use of dredged materials;

(ix) whether any potential or committed sources of funding, other than from the Account, will be provided with a description of the total contribution amount and estimated percentage of the project to be funded;

(x) whether the potential project partner can make a binding funding commitment to meet the required percentage of the Account's shared project cost necessary to receive funding from the Account;

(xi) the desired outcome or goals of the project for which funding is sought from the Account;

(xii) if available, the feasibility and cost-effectiveness of the project;

(xiii) if available, the economic impacts of erosion in the area of the project;

(xiv) identification of the project category for which funding is sought from the Account and a description of the partners proposed cost share:

(I) if the project includes a beach nourishment and associated enhancements project on a public beach or bay shore, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 25 percent. Beach nourishment and associated enhancements are defined as activities that include direct placement of beach-quality sand to create or maintain a beach. It also includes associated construction or enhancements to the dune system;

(II) if the project includes a marsh restoration project, a bay shoreline protection project other than a beach nourishment and associated enhancements project, or any other coastal erosion response study or project, the qualified project partner's shared project cost, as compared to the Account's contribution, must be at least 40 percent;

(III) a project for removal of debris or structures, relocation of structures from the public beach, including the purchase of property located on a public beach, or the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project with a shared project cost requirement to be determined by the GLO, in accordance with subsections (b)(11) - (13) and (h) of Texas Natural Resources Code, §33.603;

(IV) a structural shoreline protection project on or landward of a public beach that utilizes innovative technologies, designed or engineered to minimize beach scour, in accordance with Texas Natural Resources Code, §33.603(b)(14); or

(V) an erosion response demonstration project in accordance with Texas Natural Resources Code, §33.603(g);

(VI) whether the project for which funding is sought from the Account is being sought without a shared project cost requirement in accordance with Texas Natural Resources Code, §33.603(f);

(xv) whether there is a permit associated with the project;

(xvi) a description of how the project is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) (relating to Policies for Construction in the Beach/Dune System), and identification of whether the project involves structural shoreline protection on or landward of a public beach; and

(xvii) whether the potential project partner seeks to manage the project or requests that the GLO manage the project.

(B) The GLO will evaluate received Applications based on the following general requirements:

(i) the feasibility and cost-effectiveness of the project;

(ii) the economic impacts of erosion in the area of the project;

(iii) the effect of the project on public property, public infrastructure, private property, or natural resource threatened by erosion;

(iv) the effect of the project on Coastal Natural Resource Areas threatened by erosion;

(v) if the project is located within the jurisdiction of a local government that administers a beach/dune plan:

(I) whether the local government is adequately administering the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Dune Protection Act (Texas Natural Resources Code, Chapter 63); and

(II) whether the local government has implemented an erosion response plan for reducing public expenditures due to erosion and storm damage losses established under Texas Natural Resources Code, §33.607, and §15.17 of this title (relating to Local Government Erosion Response Plans);

(vi) whether the project will provide for beneficial use of beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state;

(vii) whether the potential project partner has leveraged other sources of funding and already made or received a binding commitment to fund all or a portion of a given project;

(viii) if the project involves the construction or retrofitting of dams, jetties, groins or other structural impoundments, whether such structures will be designed with a sediment bypass system; and

(ix) if the project involves structural shoreline protection on or landward of a public beach, whether such project uses innovative technologies designed or engineered to minimize beach scour in accordance with Texas Natural Resources Code, §33.603(b)(14) and is consistent with the Coastal Management Plan's enforceable policies set out in 31 TAC §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(C) After conducting an evaluation according to the general requirements identified in subparagraph (B) of this paragraph, the GLO will further evaluate received Applications based on the following priority criteria:

(i) the relative severity of erosion in each area;

(ii) whether the project will enhance community resiliency;

(iii) the needs in other critical coastal erosion areas;

(iv) whether federal and local governmental financial participation in the project is maximized;

(v) whether financial participation by private beneficiaries of the project is maximized;

(vi) whether the project achieves efficiencies and economies of scale;

(vii) whether funding the project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas or have received funding from the Account; and

(viii) the cost of the project in relation to the amount of money available in the Account.

(D) Based on the evaluation of the Applications and availability of funding, the GLO will designate projects as either priority projects or alternate projects.

(i) If, as a result of the evaluation process, the GLO designates a potential project as an alternate project, the potential project partner will be notified in writing. The GLO will retain the Application and may reevaluate it if future conditions warrant funding the project in the current state fiscal biennium. The Application must be resubmitted by the potential project partner for consideration for funding in a subsequent state fiscal biennium.

(ii) If the GLO's evaluation results in a designation of a project as a priority project, the GLO will enter into a project cooperation agreement with the qualified project partner.

(E) A project cooperation agreement must explicitly define all activities and responsibilities for undertaking a priority project between the GLO and a qualified project partner as set out in §15.42 of this chapter.

(3) As appropriate, the GLO may request the applicant to work cooperatively or participate in a further review to identify and select a preferred erosion response solution to address any erosion problem(s) identified in the Application. The preferred erosion response solution may be determined by the GLO through the evaluation of an alternatives analysis and feasibility study, which may include modeling and consideration of long-term results of various methods of design. Based on this evaluation, the GLO will select the best erosion response solution to accomplish the goals in the Application.

(A) Projects will be evaluated by the GLO on whether the potential or qualified project partner has already made or received a binding commitment to fund all or a portion of a given project and whether the feasibility and cost-effectiveness of the preferred erosion response solution is meeting the objectives stated in the Application.

(B) The GLO may, at its sole discretion, fund studies or activities that evaluate erosion, identify preferred erosion response solutions, or fund projects that investigate methods to help identify and enhance community resiliency strategies.

(C) The GLO will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of a preferred erosion response solution according to the considerations detailed in subparagraph (A) of this paragraph.

(D) Each state fiscal biennium the GLO may determine that at least one project designated as a priority project may be undertaken by the GLO without requiring a qualified project partner to provide a portion of the shared project cost as provided in Texas Natural Resources Code, §33.603(f). In addition to the considerations detailed in subparagraph (A) and (C) of this paragraph, the GLO may consider the following factors in determining whether to fund erosion response projects without a cost share requirement:

(i) whether the total cost of the projects that are approved under this section exceeds one-half of the total amount appropriated to the GLO for coastal erosion planning and response for the state fiscal biennium in which funding is sought;

(ii) the relative amount of funding available to the qualified project partner from sources other than the Account; and

(iii) the potential impact of the projects on coastal erosion in relation to the total estimated cost of the projects.

(b) The GLO may use the criteria set forth in this section to select a project for funding that will address an emergency situation. The GLO may accept an emergency project Application at any time during the state fiscal biennium. The Application must describe the area that is immediately threatened or impacted by erosion and how the emergency erosion project will address or resolve the identified erosion problem.

§15.42. Funding Projects From the Coastal Erosion Response Account.

(a) For purposes of funding priority projects under the coastal erosion response account (Account), a project cooperation agreement must be executed between the General Land Office (GLO) and a qualified project partner. A potential project partner becomes a qualified project partner by entering into a project cooperation agreement with the GLO. The GLO must explicitly describe in the project cooperation agreement the terms and conditions under which the GLO will provide funds from the Account for the project.

(b) The project cooperation agreement must provide for management of the project by either the GLO or by the qualified project partner. The GLO, in its sole discretion, may determine whether:

(1) the project will be managed by the GLO, with payment to the GLO by the qualified project partner of the required percentage of the shared project cost; or

(2) the project will be managed by the qualified project partner with reimbursement from the Account to the qualified project partner for project expenses for work completed in the amount provided in the project cooperation agreement.

(c) The project cooperation agreement must include the terms of the qualified project partner's commitment to provide the required percentage of shared project cost, provide the total project budget to the extent this it is known, and identify the funding sources and the amounts that will be used as a partner's cost share or the basis of in-kind services that will be used to offset the authorizations that have been obtained or will be required to construct the project, as specified below in subsection (j).

(d) If the GLO determines that a priority project requested by a qualified project partner receives a change in funding from the Account or project terms, the GLO and the qualified project partner will amend the project cooperation agreement to reflect those changes.

(e) Except as provided in Texas Natural Resources Code, §33.603(f) and (h), qualified project partners are required to provide a minimum specified percentage amount of the shared project costs as prescribed by Texas Natural Resources Code, §33.603(e) specified below:

(1) at least 25 percent of the shared project cost, as compared to the Account's contribution, if the project is a beach nourishment and associated enhancement project on a public beach or bay shore; and

(2) at least 40 percent of the shared project cost, as compared to the Account's contribution, if the project is any other coastal erosion response study or project, including the following examples:

(A) a marsh restoration or enhancement project; or

(B) a bay shoreline protection project other than a beach nourishment project.

(f) The state's portion of the shared project cost for erosion response demonstration projects undertaken or funded pursuant to Texas Natural Resources Code §33.603(g) is limited to one-tenth of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium for which funding is sought.

(g) The GLO may, pursuant to Texas Natural Resources Code §33.603(f), undertake at least one erosion response project each biennium without requiring a qualified project partner to provide a portion of the shared project cost if the total cost of projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the GLO for coastal erosion planning and response during the state fiscal biennium.

(h) The GLO may determine the percentage of the shared project cost a qualified project partner must provide for a project undertaken pursuant to Texas Natural Resources Code §33.603(b)(11), (12), or (13) for the removal of debris, removal and relocation of structures from the public beach through reimbursement of expenses or purchase of property, and the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter.

(i) No costs incurred by a potential project partner before becoming a qualified project partner may be used to offset the cost-sharing requirement under CEPRA.

(j) In-kind goods or services provided by the qualified project partner after entering into a project cooperation agreement with the GLO may offset the partner's required portion of the shared project costs, if the qualified project partner provides the GLO with a reasonable basis for estimating the monetary value of those goods or services. The decision on whether to allow any in-kind good or service to offset the cost-sharing requirement is in the sole discretion of the GLO. The project cooperation agreement must reflect any in-kind goods or services approved by the GLO.

(k) Local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title, relating to Beach Cleaning and Maintenance Assistance Program, will not be allowed to use funds received under that program to meet the cost-sharing requirement.

§15.44. Beneficial Use of Dredged Materials.

(a) If a project receives funds from the coastal erosion response account (Account), material dredged in constructing and maintaining navigation inlets and channels of the state shall be placed on or used to benefit eroding beach areas [~~beaches~~] or [~~used~~] to restore [~~eroding~~] or create wetlands to mitigate erosion [~~wherever practicable~~]. The GLO [~~Land Office~~], in consultation with a qualified project partner, shall evaluate the practicality and suitability of proposed beneficial use of dredged material in accordance with this section and shall consider relative cost of the material and the sediment composition.

[~~(b) A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on the published data of the University of Texas at Austin Bureau of Economic Geology, is considered an eroding area for the purposes of this subchapter.~~]

(b) [~~(c)~~] For the purposes of this subchapter, beneficial use of dredged material shall not be deemed practicable if the cost to the GLO [~~Land Office~~] and qualified project partner for placement of the material dredged in constructing and maintaining navigation inlets and channels of the State exceeds the cost of obtaining similar material suitable for placement onor used to benefit eroding beach areas [~~beaches~~] or to create wetlands from another source, including transportation costs. In the case of placement for wetland restoration, the cost of soil preparation and treatment may also be considered.

(c) [~~(d)~~] In determining the suitability and practicality of dredged material for beach placement, the GLO [~~Land Office~~] may refer to the guidance materials by the [~~found in Chapter 9 of~~] U.S. Army Corps of Engineers, relating to [~~Publication No. EM 1110-2-5026,~~] "Engineering & Design, Beneficial Uses of Dredged Material, Coastal Engineering, and Beach Fill Design". [~~USACE, 30 June 1987 and U.S. Army Corps of Engineers, Publication No. EM 1110-2-1100, "Coastal Engineering Manual - Part V," Chapter 4, Beach Fill Design, USACE, 1 August 2008. Copies of these publications can be obtained on request by mail sent to the General Land Office, Attn Director, Planning, Permitting and Technical Services Division, Coastal Resources Program Area, P.O. Box 12873, Austin, TX 78711-2873 from the U.S. Army Corps of Engineers web site located at http://140.194.76.129/publications/eng-manuals/.~~] Only beach-quality sand shall be considered for beach placement.

(d) [~~(e)~~] In this section "beach-quality sand means sediment material that:

(1) has effective grain size, mineralogy, and quality that approximates the existing beach material in the placement area;

(2) is low in fine grain, silty, or clayey sediments; and

(3) contains no hazardous substances listed in the Code of Federal Regulations, Title 40, Part 261, Subpart D - List of Hazardous Wastes, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(e) [~~(f)~~] In determining the suitability and practicality of placement of dredged material for wetland restoration, the GLO [~~Land Office~~] may refer to the guidance materials by the [~~found in Chapter 5 of~~] U.S. Army Corps of Engineers, relating to [~~Publication No. EM 110-2-5026,~~] "Engineering & Design, Beneficial Uses of Dredged Material," [~~USACE, 30 June 1987. Copies of this publication can be obtained on request by mail sent to the General Land Office, Attn: Director, Planning, Permitting and Technical Services Division, Coastal Resources Program Area, P.O. Box 12873, Austin, TX 78711-2873 and/or the U.S. Army Corps of Engineers web site located at http://140.194.76.129 /publications/eng-manuals.~~]

(f) [~~(g)~~] This section applies only to an erosion response project that receives funds from the Account [~~coastal erosion response account after the effective date of this section~~].

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

Filed with the Office of the Secretary of State on March 29, 2019.

TRD-201900957
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 475-1859

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §§15.50 - 15.53, 15.55

The Texas Department of Transportation (department) proposes amendments to §§15.50 - 15.53 and 15.55, concerning Federal, State, and Local Participation.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §15.50, Purpose, expand the applicability of the subchapter to all transportation projects, in order to ensure that the responsibilities of the parties are clear for all types of projects for which federal, state, and local cost participation is available under current federal and state transportation programs.

Amendments to §15.51, Definitions, expand various definitions to include all transportation projects for which federal, state and local cost participation is available, rather than only highway improvement projects. Multiple definitions are removed because they define terms that are no longer used in this subchapter.

Amendments to §15.52, Agreements, rearrange and reword the text for clarity, and remove references to the chart in §15.55(c) that designates funding participation ratios because that portion of the rule is being amended to remove the chart. This section is further amended to provide for the department to designate the type of funding arrangement to be used under a funding agreement to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. Inclusion in the Statewide Transportation Improvement Program is added as a condition under which a project may be authorized by the commission to

align with federal requirements. The designation of the fixed price funding arrangement as being the standard funding type is removed and the requirement for executive director approval for the use of specified percentage funding arrangement is removed in order to allow the department to allocate most appropriately the risk of cost overruns to the party that has the greater ability to manage the cost of the project. The criteria the department will consider in determining the fixed price amount is amended in §15.52(4)(A) in order to reduce financial risk to the department. The amendment also adds flexibility by providing for an adjustment to a fixed price amount when further definition of a local government's requested scope of work identifies greatly differing costs than those initially estimated. Subparagraph §15.52(4)(B)(i) related to specified percentage funding is revised to state minimum percentage local government participation amounts for various state and federal funding programs will be designated by the department and that the local government is responsible for all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government. Paragraph (8) expands the conditions for termination to indicate conditions under which the department may terminate the agreement when the local government and the department are not able to execute a mutually agreeable amendment.

Amendments to §15.53, Preliminary and Construction Engineering Expenses, remove a reference to §15.55(c) to reflect amendments made to §15.55.

Amendments to §15.55, Construction Cost Participation, remove the chart establishing federal, state, and local cost participation ratios and provides that the department will establish the ratios. The removal provides flexibility by allowing the department to timely update the federal, state, and local cost participation ratios when the required participation ratios change in federal legislation.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Kenneth Stewart, Director, Contract Services Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Kenneth Stewart, Director, Contract Services Division has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be faster negotiation and execution of jointly funded contracts, earlier commencement and completion of projects, and faster reconciliation of final costs for each party to the contract.

COSTS ON REGULATED PERSONS

Kenneth Stewart, Director, Contract Services Division has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are not anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code §2001.045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Kenneth Stewart, Director, Contract Services Division has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed rules are in effect, there is no impact on the growth of state government.

TAKINGS IMPACT ASSESSMENT

Kenneth Stewart, Director, Contract Services Division has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§15.50 - 15.53, and 15.55 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "43 T.A.C. §§15.50 - 15.53 and 15.55." The deadline for receipt of comments is 5:00 p.m. on May 13, 2019. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, Chapter 224.

§15.50. Purpose.

This subchapter describes federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects.

§15.51. Definitions.

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

(1) Commission--The Texas Transportation Commission.

~~[(2) Congestion Mitigation and Air Quality Improvement Program (CMAQ)--A federal program, established and administered in accordance with 23 United States Code §104 and federal regulations, which provides federal funds for a project in a non-attainment area that~~

~~contributes to the attainment of a natural ambient air quality standard or will have certified benefits to air quality.~~]

(2) [~~(3)~~] Construction cost--All direct and indirect costs identified by the department's cost accounting system to a highway improvement or other transportation project, other than for right of way acquisition, preliminary engineering, and construction engineering.

(3) [~~(4)~~] Construction engineering cost/expenses--Engineering or project administration costs and expenses incurred, including indirect costs and expenses identified by the department's cost accounting system, on a highway improvement or other transportation project after contract award.

(4) [~~(5)~~] Department--The Texas Department of Transportation.

(5) [~~(6)~~] District office--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(6) [~~(7)~~] Economically disadvantaged county--As determined from data provided to the department by the Texas Comptroller of Public Accounts at the beginning of each fiscal year, a county that has, in comparison to other counties in the state:

(A) below average per capita taxable property value;

(B) below average per capita income; and

(C) above average unemployment.

(7) [~~(8)~~] Eligible utilities--Costs of utility adjustments, required by a highway improvement or other transportation project, that are eligible, in accordance with federal and state law, for reimbursement by the department.

(8) [~~(9)~~] Executive director--The executive director of the department, or a designee.

(9) [~~(11)~~] Federal funds--Financial assistance provided by the federal government for highway improvement and other transportation projects.

[~~(10) Farm and Ranch to Market (FM/RM) System Route--A road on the system of roads designated by the commission under Transportation Code, §201.104.~~]

(10) [~~(12)~~] Highway improvement project--A project which provides for the design, construction, improvement, or enhancement of a public road, including bridges, culverts, or other appurtenances related to public roads, either on or off the state highway system.

(11) [~~(14)~~] Local government--Any county, city, other political subdivision of this state, or special district that has the authority to finance a highway improvement or other transportation project.

[~~(13) Hurricane Evacuation Route--A designation given to a roadway that serves as the primary route for use by the public in the event of a hurricane or other evacuation event and includes appropriate signing, traffic flow indicators, and auxiliary travel lanes.~~]

(12) [~~(15)~~] Local participation--Financial [~~Minimum financial~~] assistance provided by a local government to participate in costs associated with highway improvement or other transportation projects.

(13) [~~(16)~~] Matching funds/participation ratio--Those portions of funds required or chargeable for the contribution toward a highway improvement or other transportation project's cost by a local government.

(14) National Highway System (NHS)--A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

[~~(17) Metropolitan highway--A local road or street which compliments the state highway system, as designated by the commission.~~]

[~~(18) Metropolitan planning organization (MPO)--An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.~~]

[~~(19) National Highway System (NHS)--A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.~~]

[~~(20) National System of Interstate and Defense Highways (Interstate Highway System)--A system of roads and bridges that constitute a part of the National Highway System designated by the United States Congress as essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.~~]

(15) [~~(21)~~] Off-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system.

[~~(22) Off-state highway system routes--Those routes not designated on the state highway system which are the responsibility of local governments.~~]

[~~(23) Off-State Highway System Safe Routes to School Program--A program that makes federal funds available to improve bicycle and pedestrian safety of school age children in and around school areas on facilities under the jurisdiction of a local government and not on the state highway system.~~]

[~~(24) Off-State Highway System Safety Program--A federally mandated program by which federal funds are made available for safety improvements to facilities under the jurisdiction of a local government and not on the state highway system.~~]

[~~(25) On-State Highway System Bridge Program--A federally mandated program by which federal funds are made available to replace or rehabilitate bridges on the state highway system.~~]

[~~(26) On-State Highway System Safe Routes to School Program--A program that makes federal or state funds available to improve bicycle and pedestrian safety of school age children in and around school areas on the state highway system.~~]

[~~(27) On-State Highway System Safety Program--A federally mandated program by which federal or state funds are made available for safety improvements on the state highway system.~~]

[~~(28) On-System Turnpike Project - A tolled state highway.~~]

[~~(29) Phase 1 Trunk System Corridor--Corridors of the Texas Trunk System prioritized for project development by the commission.~~]

(16) [~~(30)~~] Preliminary engineering cost/expenses--Costs and expenses incurred, including indirect costs and any other expenses identified by the department's cost accounting system, on a highway improvement project before construction contract award.

~~[(31) Principal Arterial Street System (PASS) Program--A commission-approved program to improve urban arterial streets designated on the state highway system to relieve major traffic corridors and enhance total system operations in urban areas over 200,000 in population.]~~

(17) [~~(32)~~] Reconstruction--The primary activities involving the rebuilding of a segment of highway along the existing route as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.

(18) [~~(33)~~] Rehabilitation--The primary activities to restore, or re-establish in good condition, a segment of highway (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).

(19) [~~(34)~~] Reservoir agency--A public or private agency that has the authority to construct, maintain, or operate a reservoir facility.

(20) [~~(35)~~] Right of way costs--All direct and indirect costs identified by the department's cost accounting system for the acquisition of land or an interest in land necessary for the development of a highway improvement or other transportation project (including access rights to abutting properties, eligible utility relocation/adjustment costs, and other direct expenses when specified in the agreement).

(21) [~~(36)~~] Right of way acquisition [~~procurement~~]--That process identified with the procurement [~~acquisition~~] of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved highway improvement or other transportation projects.

(22) [~~(37)~~] State funds--Money received by the department, other than federal funds, funds in excess of minimum requirements, or local participation, to be expended for highway improvement and other transportation projects.

(23) [~~(38)~~] State highway system--The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Transportation Code, §201.103.

(24) [~~(39)~~] State highway system routes--Those state numbered routes designated as a part of the state highway system.

~~[(40) State Park Road Program--A program by which state funds are utilized to construct roads within or adjacent to public facilities administered by the Texas Parks and Wildlife Department.]~~

~~[(41) Statewide Mobility Corridor--A transportation corridor or network designated by the commission that provides for or substantially affects significant multi-regional, intrastate, or interstate travel needs.]~~

~~[(42) Surface Transportation Program (STP)--A federal-aid program where states may obligate federal funds to projects related to certain public roads.]~~

~~[(43) Texas Trunk System--A rural highway network as described in §16.56 of this title (relating to Texas Highway Trunk System).]~~

~~[(44) Transportation Enhancement Program--A federally mandated program identified in §11.200 et seq. of this title (relating to Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems and facilities within the state for the enjoyment of the users of those systems.]~~

(25) Transportation project--A transportation improvement project or transportation-related program that is not a highway improvement project and that is fully or partially funded with state or federal funds.

(26) Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

~~[(45) United States (U.S.) System Route--Those routes designated on the state highway system as U.S. highways and eligible for federal-aid funds as set forth in federal law and regulations.]~~

~~[(46) Urban Road System--A commission designated system of routes that consist of the continuation of Farm to Market Roads in urban areas over 50,000 in population.]~~

~~[(47) Urbanized area--As defined in 23 United States Code §101, an area with a population of 50,000 or more designated by the United States Bureau of Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, and subject to the approval of the United States Secretary of Transportation.]~~

~~[(48) Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).]~~

§15.52. Agreements.

This section describes the contents of the department's funding [~~joint participation~~] agreement with a local government for a highway improvement or other transportation project and the responsibilities of the parties to such an agreement. The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.

(1) Right of entry. If the local government is the owner of the project site, it shall permit the department or its authorized representative to occupy the site to perform all activities required to execute the work. If the department is the owner of the project site, it shall permit the local government or its authorized representative to occupy the site to perform all approved activities required to execute the work.

(2) Right of way and utility relocations and adjustments. The local government will provide all necessary right of way and utility relocations and adjustments, whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). Existing utilities will be relocated and adjusted by the local government with respect to location and type of installation in accordance with the requirements of the department under §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C of this title (relating to Utility Accommodation).

(3) Responsibilities of the parties. The local government and the department shall identify in the agreement the responsibilities of each party. Responsibilities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.

(A) Local government performance and management of projects. For state highway improvement projects and other transportation projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:

(i) perform a highway improvement project on the state highway system using employees under the direct control of the local government;

(ii) outsource preliminary project engineering and design, bid opening, contract award, and construction management of an improvement project for which federal or state reimbursement is requested;

(iii) contract for highway construction; or

(iv) perform other projects and programs as authorized by law.

(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.

(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if the following conditions are met:

(i) the local government must commit in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agree to forfeit any claim to federal and state reimbursement if it fails to comply;

(ii) the project must be authorized by the commission in the current Unified Transportation Program, Statewide Transportation Improvement Program, or a specific minute order;

(iii) a project on the state highway system performed or managed by a local government must be operationally beneficial to the state;

(iv) a roadway construction project requested by the local government that is to be on the state highway system, and for which local management is proposed, must be funded at least 50 percent from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;

(v) a project that includes the local government improving freeway mainlanes on the state highway system must have the express written approval of the executive director;

(vi) the local government must agree to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and

(vii) the department must review and approve all plans, contract awards, and change orders.

(D) Approval. Prior to execution of the funding agreement, a local government must receive written approval by the executive director to perform or manage one or more elements of a highway improvement or other transportation project. In determining whether to recommend approval or disapproval of a project, the department will evaluate the following criteria:

(i) availability of department resources to perform or manage the highway improvement or other transportation project in an efficient and timely manner;

(ii) the demonstrated capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;

(iii) the percentage of total project cost to be provided by the local government;

(iv) the department's determination of cost effectiveness of local performance of the work as compared to the department's performance of the project; and

(v) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(4) [~~(3)~~] Funding arrangement. The agreement will specify the funding arrangement designated [~~agreed upon~~] by the department [~~and the local government~~]. Funding arrangements in the agreement [~~The funding arrangement~~] shall include any adjustments required by §15.55 of this subchapter. The funding arrangement [~~agreed upon by the department and the local government~~] for drainage construction costs will be as specified under §15.54(e) of this subchapter (relating to Construction). Available funding types are as follows:

(A) Fixed price [~~Standard (fixed price)~~]. The fixed price amount will be based on the department's estimated cost of the work to be performed [~~by the department on a project for which state or federal funds are received~~].

(i) In determining the fixed price amount, the department will consider:

(I) eligibility of local government requested work for federal or state cost participation;

(II) the department's experience in performing or managing the proposed type of work;

(III) the clarity of defining the local government's proposed work scope and the department's ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(ii) [~~(i)~~] A local government is responsible for the fixed price amount, which is not subject to adjustment unless:

(I) differing site conditions are encountered;

(II) further definition of the local government's requested scope of work identifies greatly differing costs from those estimated;

(III) [~~(II)~~] work requested by the local government is determined to be ineligible for federal participation; or

(IV) [~~(III)~~] the adjustment is mutually agreed to [~~on~~] by the department and the local government.

~~*[(ii)* In determining the fixed price amount, the department will consider:]~~

~~*[(I)* requests by the local government to include work that is ineligible for federal or state participation;]~~

~~*[(II)* the need for accelerated project delivery;]~~

[(III) the type of work proposed and the ability to accurately estimate its cost; and]

[(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.]

[(iii) The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement entered into under this subchapter.]

(B) Specified percentage. The [If approved by the executive director, the] local government is responsible for [all, or] a specified percentage [, as shown in Figure: 43 TAC §15.55(c) of this subchapter,] of actual project costs. [the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way, as well as]

(i) Minimum percentage participation amounts for preliminary engineering, construction engineering, construction, right of way, and eligible utilities for various state and federal funding programs will be designated by the department. In addition to the designated specified percentages, with this funding type, the local government is also responsible for the direct cost of [for] any work included in the project which is ineligible for federal or state participation and all project costs that are greater than the maximum state and federal participation specified in the funding agreement between the department and the local government.

(ii) For federally funded non-construction programs, the local government is responsible for any required match and for any work included that is ineligible for federal or state participation. [The department will accept in-kind contributions for matching funds or other funds only under agreements that do not include highway construction.]

(C) Periodic.

(i) The executive director may approve a local government to make periodic payments of its funding share only if:

(I) the periodic payments sought are based on the estimated cost for the work for which the funds are received and the local government proposes a schedule to repay the entire amount; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) In approving a request for periodic payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) needs of the department for delivery of the project to proceed in advance of receiving local funding participation [need for accelerated project delivery];

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(D) Off-State Highway System Bridge Program Fixed Amount. For projects funded in the Off-State Highway System Bridge Program, the local government is responsible for a fixed amount that is based on the specified percentage[, as shown in Figure: 43 TAC §15.55(c) of this subchapter,] of the estimated direct costs for preliminary engineering, construction engineering, and construction, and for the actual direct costs for right of way and eligible utilities. The estimated direct costs that will be used to establish the fixed amount under this subparagraph, are based on the department's estimate of the eligible work at the time the agreement is executed. The local government is responsible for the estimated direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program, 23 U.S.C. §144 and Highway Bridge Replacement and Rehabilitation Program, 23 C.F.R. §650 Subpart D. The fixed amount under this subparagraph will be adjusted through the execution of an amendment to reflect additional costs resulting from changes made at the request of the local government, either during preliminary engineering or construction.

(5) [(4)] Interest. The department will not pay interest on funds provided by the local government. Funds provided by the local government will be deposited into, and retained in, the state treasury.

(6) [(5)] Amendments. In the case of significantly differing site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department, and the local government will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government.

(7) [(6)] Payment provision. The agreement will establish the conditions for payment by the local government, including, but not limited to, the method of payment and the time of payment.

(A) Fixed price [Standard (fixed price)]. If a fixed price funding arrangement is used, the fixed price amount is not subject to adjustment, except as provided for in paragraph (4)(A)(ii) [(3)(A)(i)] of this section.

(B) Specified percentage.

(i) Upon execution of the agreement or at a later date, unless periodic payments have been requested by the local government and approved by the executive director, the local government will pay, as a minimum, its funding share for the estimated cost for any right of way and preliminary engineering for the project. Unless periodic payments have been requested by the local government and approved by the executive director, the local government, before the department's scheduled date for construction contract letting, will remit to the department an amount equal to the remainder of the local government's funding share for the project.

(ii) After the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(C) Periodic. After a periodically paid project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department will notify the local government of the amount of the difference and the local government shall promptly transmit that amount

to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to changes made at the request of the local government. The local government shall promptly transmit the required amount to the department.

(E) Valuation of in-kind contributions. Before the department may enter an agreement under which goods, services, or real estate are accepted rather than financial consideration, the department will document a value for the in-kind contributions consistent with 49 C.F.R. §18.24.

(8) [~~(7)~~] Termination. If the local government withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government is participating. If costs for local government requested items increase significantly due to differing site conditions, determination that local government requested work is ineligible for federal or state cost participation, or more thorough definition of the local government's proposed work scope, and the local government and the department are not able to execute a mutually agreeable amendment, the department may terminate the agreement. In this instance, the department will reimburse local government remaining funds to the local government within 90 days of termination.

~~[(8) Responsibilities of the parties. The local government and the department shall identify in the agreement which party will prepare or provide construction plans, perform construction, advertise for bids, award a construction contract, and perform construction supervision. Activities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.]~~

~~[(A) Local government performance and management of projects. For state highway improvement projects and other projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:]~~

~~*[(i)* perform, using employees under the direct control of the local government, a highway improvement project on the state highway system;]~~

~~*[(ii)* outsource preliminary project engineering and design, bid opening, award of construction to a contractor, and construction management by the local government or a consultant hired by the local government of an improvement project for which reimbursement is requested;]~~

~~*[(iii)* contract for highway construction; or]~~

~~*[(iv)* perform other projects as authorized by law.]~~

~~[(B) Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the executive director must authorize the local government to perform that act. The executive director may also approve the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.]~~

~~[(C) Conditions. A local government may perform an act described in subparagraph (A) of this paragraph only if:]~~

~~*[(i)* the local government commits in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agrees to forfeit any claim to federal and state reimbursement if they fail to comply;]~~

~~*[(ii)* the project is authorized by the commission in the current Unified Transportation Program or by a specific minute order;]~~

~~*[(iii)* a project on the state highway system performed or managed by a local government is operationally beneficial to the state;]~~

~~*[(iv)* a roadway construction project requested by the local government that is to be on the state highway system, for which local management is proposed, is funded with at least 50 percent of the funds coming from a non-federal and non-state source, unless a lesser percentage is approved by the executive director;]~~

~~*[(v)* the local government agrees to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and]~~

~~*[(vi)* the department reviews and approves all plans, contract awards, and change orders.]~~

~~[(D) Approval. The department will not approve any project that includes the local government improving freeway mainlanes on the state highway system, without express written approval of the executive director. In determining its approval or disapproval of local government's request to manage one or more elements of performance and management of a project, the department will evaluate the following criteria:]~~

~~*[(i)* previous experience of the local government in performing the type of work proposed;]~~

~~*[(ii)* the capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;]~~

~~*[(iii)* the need for accelerated project delivery;]~~

~~*[(iv)* department resources available to perform or manage the highway improvement project in an efficient and timely manner;]~~

~~*[(v)* cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process; and]~~

~~*[(vi)* any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.]~~

(9) Acknowledgment. The local government must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

(10) Local regulations. If any existing, future or proposed local ordinance, commissioners court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, that is more restrictive than state or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased cost to the department for a highway improvement or other transportation project,

the local government must commit in the agreement to being responsible for all increased costs associated with the ordinance, order, policy, directive, or change, regardless of the funding arrangement specified in the agreement.

§15.53. Preliminary and Construction Engineering Expenses.

(a) Purpose. This section defines the responsibility of local governments for preliminary engineering and construction engineering expenses associated with the development of highway improvement projects.

(b) Funding. Preliminary and construction engineering expenses may be funded by the commission at the entire expense of the department, with local participation, and/or with federal participation, [~~as shown in Appendix A of §15.55 of this title (relating to Construction Cost Participation),~~ and] in accordance with criteria set forth by federal law and regulations. Any required local participation is subject to adjustment under §15.55 of this title (relating to Construction Cost Participation).

§15.55. Construction Cost Participation.

(a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.

(1) Participation ratios. Except as provided in subsections (b) and (d) of this section, the agreement between the local government and the department must include participation ratios as described in subsection (c) of this section.

(2) In-kind contributions. The department will accept in-kind contributions for local government matching or other funds only under agreements that do not include highway construction.

(b) Economically disadvantaged counties. In evaluating a proposal for a highway improvement project with a local government that consists of all or a portion of an economically disadvantaged county, the executive director shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after receipt of a request for adjustment under paragraph (3) of this subsection.

(1) Commission certification. The commission will certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed under §15.51(6)[~~§15.51(7)~~] of this subchapter (relating to Definitions).

(2) Local match adjustment. In determining the adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

(A) population level;

(B) bonded indebtedness;

(C) tax base;

(D) tax rate;

(E) extent of in-kind resources available; and

(F) economic development sales tax.

(3) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that represents all or a portion of an economically disadvantaged county, shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:

(A) the proposed project scope;

(B) the estimated total project cost;

(C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);

(D) the proposed participation rate;

(E) the nature of any in-kind resources to be provided by the local government;

(F) the rationale for adjusting the minimum local matching funds requirement; and

(G) any other information considered necessary to support a request.

(4) Timing of determination. The executive director will determine whether to make an adjustment at the time the local government submits a proposal for a highway improvement or other transportation project.

(5) Definition. For purposes of this subsection, "executive director" means the executive director or his or her designee, not below the level of district engineer or division or office director.

(c) Participation ratios. The department will establish [~~following~~ establishes] federal, state, and local cost participation ratios for highway improvement or other transportation projects, subject to the availability of funds to the department. In-kind participation will be valued as described in §15.52(7)(E) [~~§15.52(6)(E)~~] of this subchapter (relating to Agreements).
~~Figure:~~ ~~43 TAC §15.55(c)~~

(d) Off-state highway system bridge program.

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

(A) Bridge--For an equivalent-match project, a bridge or other mainlane cross-drainage structure, including low water crossings (with or without conduit).

(B) Deficient bridge--A bridge having a structural load capacity or other safety condition that is inadequate.

(C) District engineer--The chief executive officer in each designated district office of the department.

(D) Equivalent-match project--A project in which the local government will improve the structural load capacity or other safety condition of off-state system bridges utilizing 100% local funds.

(E) Participation-waived project--An off-state system bridge project in which the state agrees to pay for local participation for eligible preliminary engineering, construction, and construction engineering costs as shown in subsection (c) of this section. This project must be authorized for development only, or for development and construction, on the department's approved Unified Transportation Program, satisfy minimum standards established by the department for off-state system bridges, and meet the additional requirements of this subsection.

(F) Safety work--Work performed as part of an equivalent-match project that improves the safety of the project. This work may include, but is not limited to, providing improved structural load capacity, improved hydraulic capacity, increased roadway width, adequate bridge rail, and adequate approach guardrail.

(2) Waiver. The district engineer may waive the requirement for a local government to provide the original 10% estimate of direct costs for preliminary engineering, construction engineering, and construction funds on the participation-waived project(s) if the local governmental body commits by written resolution or ordinance, as described in paragraph (4) of this subsection, to spend an equivalent amount of funds for structural improvement or other safety work on another bridge or bridges on the equivalent-match project(s) within its jurisdiction or the jurisdiction of a geographically adjacent or overlapping governmental unit. An equivalent amount includes, but is not limited to, expenditures for direct or indirect costs for structural improvement or other safety work on bridge(s) in the equivalent-match project(s). Work on one or more equivalent-match projects may be credited to one or more participation-waived projects.

(3) Eligibility. A local government is eligible for a waiver if:

(A) the construction contract for the participation-waived project has not been awarded;

(B) work on the equivalent-match project has not begun prior to approval of the waiver (approval of the waiver does not guarantee that the participation-waived project agreement will be executed);

(C) the local government is in compliance with load posting and closure regulations as defined in the National Bridge Inspection Standards under 23 C.F.R. §650.303;

(D) the bridge on the proposed equivalent-match project(s) is a deficient bridge, or a bridge that is weight restricted for school buses; and

(E) the equivalent-match project increases the structural load capacity of the existing bridge, replaces the bridge with a new bridge, or otherwise increases safety, with a minimum upgrade to safely carry expected school bus loading.

(4) Request for waiver. To request a waiver, a local government must provide a written request to the district engineer that includes the location(s), description of structural improvement or other safety work proposed, estimated cost for the equivalent-match project(s), and a copy of the local governmental body's resolution or ordinance. The resolution or ordinance must acknowledge assumption of all responsibilities for engineering and construction and complying with all applicable state and federal environmental regulations and permitting requirements for the bridge(s) on the equivalent-match project(s).

(5) Considerations. In approving a request for waiver, the district engineer will consider:

(A) the type of work proposed for the equivalent-match project(s);

(B) regional transportation needs; and

(C) past performance under this subsection.

(6) Approval. The district engineer will submit a letter to the local government indicating the district engineer's approval or disapproval of the waiver. If disapproved, the letter will state the reasons for disapproval. If the waiver is approved, the letter will state that the local government, for the equivalent-match project(s) will assume:

(A) all costs of the work;

(B) responsibility for complying with all applicable state and federal environmental regulations and permitting requirements; and

(C) responsibility for the engineering and construction necessary for completion of the work.

(7) Agreement and conditions.

(A) If the district engineer approves the waiver, the local government and the department will enter into an agreement for the participation-waived project as specified in §15.52 of this subchapter. One or more participation-waived project agreements can utilize one or more common or independent equivalent-match projects if the total equivalent-match project amount equals or exceeds the total remaining local participation amount being waived at the time the agreement is executed, and the common agreements are adequately cross-referenced. Previously executed agreements may be amended to incorporate these participation waiver provisions, or to utilize an additional equivalent-match project(s) for any outstanding amount not previously waived, provided the construction contract for the participation-waived project has not been awarded and the equivalent-match work has not begun.

(B) Local governments will be allowed a maximum of three years after the contract award of the participation-waived project(s) to complete structural or other safety improvements on the equivalent-match project(s). If more than one participation-waived project utilizes a common equivalent-match project, the time period allowed for completion of the equivalent-match project(s) will begin when the first of the participation-waived projects is awarded. The district engineer may specify a period less than three years for completion of equivalent-match projects if project specific conditions warrant. If specified, the shorter allowable work period must be explicitly stated in the agreement(s). No later than 30 days after completion, documentation of completion of the equivalent-match project(s) requirement will be provided by letter to the district engineer. If the local government fails to adequately complete the equivalent-match project(s), it will be excluded from future waivers under this subsection for a minimum of five years. The district engineer may grant an extension to the three-year completion requirement if a contract for the equivalent-match project(s) has been executed within that three years and the contract timeline for completion is reasonable. In the absence of information suggesting that a shorter or longer period is appropriate, two years or less will be presumed to be a reasonable time, for a maximum of five years to complete the equivalent-match project(s) following award of the programmed bridge. The granting of an extension to the three-year time limit must be done in writing in response to a written request to the district engineer from the local government. The extension approval must specify a new required completion date.

(C) With the approval of the district engineer, an equivalent-match project(s) may be substituted by subsequent amendment to the participation-waived project agreement(s). A substitution may be allowed for unforeseen circumstances, including but not limited to, an equivalent-match project that is selected for replacement under some other program of work. Work on the substituted equivalent-match project(s) must be completed within a maximum of three years after the award of the construction contract for the original participation-waived project.

(D) The local government is responsible for all of the direct cost of any participation-waived project cost item or portion of a cost item that is not eligible for federal participation under the Federal Highway Bridge Replacement and Rehabilitation Program under 23 U.S.C. §144 and 23 C.F.R. §650 Subpart D. The local government is also responsible for any costs resulting from changes made at the request of the local government.

(E) The local government will be responsible for 100% of right of way and utilities for the participation-waived project.

(F) A local government located in an economically disadvantaged county that receives an adjustment under subsection (b) of this section may participate in the provisions of this subsection in the amount of its reduced matching funds requirement.

(G) The department will not reimburse funds already received by the department under the terms of existing agreements. Funds already received for a specific project(s) may be credited against the local government's required participation for the subsequent participation-waived project agreement(s) for that same project(s).

(H) Any equivalent-match project(s) cost that is in excess of the local government's required participation for a specific participation-waived project agreement(s) cannot be credited for use on a future participation-waived project(s).

(I) Each equivalent-match project(s) must be specifically identified in the participation-waived project agreement(s) at the time of execution.

(J) The local government must pay its funding share of the estimated participation-waived project cost, as provided in §15.52(7)(A) [~~§15.52(6)(A)~~] of this subchapter, for any local participation balance that is remaining at the time the project agreement(s) is executed. This balance would include any remaining required local participation amount in excess of the amount waived as a result of credit for equivalent-match work to be performed as part of the agreement.

(8) Projects with neighboring states. Local cost participation is not required for a bridge connecting Texas with a neighboring state.

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

Filed with the Office of the Secretary of State on March 28, 2019.

TRD-201900951
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 12, 2019
For further information, please call: (512) 463-8630

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.6

The Commission on State Emergency Communications (CSEC) adopts amended §252.6, concerning the administration, including distribution, of wireless and prepaid wireless emergency service fees, without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 649).

REASONED JUSTIFICATION

Section 252.6 provides the procedures by which CSEC determines the proportionate amount of wireless emergency services fees remitted under Health and Safety Code §771.0711 and attributable to each Regional Planning Commission (RPC) and Emergency Communication District (ECD); and distributes the proportionate amount to each ECD not participating in the state 9-1-1 program.

Subsection 252.6(a) is amended to reflect the change in name from the State Data Center to the Texas Demographic Center.

Subsection 252.6(b) is amended to make clear that it is the joint responsibility of affected RPCs and ECDs to provide the Commission with agreed adjustments to the proposed population distributions to accurately reflect their 9-1-1 service populations.

Subsection 252.6(d) is amended to authorize Commission staff to request a review and modification of the adopted distribution percentages to account for changes in 9-1-1 service boundaries not reflected in the state demographer's population estimates.

CSEC received no comments on proposed amended §252.6.

STATEMENT OF AUTHORITY

The amendments are adopted pursuant to the Health and Safety Code §§771.051, 771.074, 771.0711(c), 771.0712(a) and 771.078(b)(2).

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

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 March 28, 2019.

TRD-201900943

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: April 17, 2019
Proposal publication date: February 15, 2019
For further information, please call: (512) 305-6915

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CHAPTER 255. FINANCE

1 TAC §255.3

The Commission on State Emergency Communications (CSEC) adopts amended §255.3 concerning CSEC's policy regarding allocation of equalization surcharge (surcharge) funding to an Emergency Communication District not participating in the state 9-1-1 program without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 651); therefore, the rule will not be republished.

REASONED JUSTIFICATION

Section 255.3 is amended to correct the name of Emergency Communication District and deletes the plural term "Districts," adds the abbreviation "(ECD)," inserts the term "Regional Planning Commission," and deletes the term "9-1-1" to provide additional clarity. New subsection 255.3(b) is added to make clear the condition precedent for an Emergency Communication District to request equalization surcharge and is to make known its intent in time to be considered for inclusion in CSEC's biennial Legislative Appropriations Request. The condition precedent is waived for an Emergency Communication District's emergency surcharge request. New subsection 255.3(b) reflects that CSEC's 9-1-1 equalization surcharge appropriations are earmarked in the LAR to provide necessary supplemental funding to Regional Planning Commissions and for the CSEC to utilize consistent with its LAR.

PUBLIC COMMENTS AND AGENCY RESPONSE

CSEC received no comments on proposed amended §255.3.

STATEMENT OF AUTHORITY

The amendments are adopted pursuant to Health and Safety Code Chapter 771, §771.072(d) and §771.051.

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.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER F. PHARMACY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1831, concerning Covered Drugs; §354.1867, concerning Refills; and §354.1921, concerning Addition of Drugs to the Texas Drug Code Index.

The §§354.1831, 354.1867, and 354.1921 are adopted without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8517), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments to §354.1867 ensure that the Texas Medicaid fee-for-service program complies with Texas Insurance Code provisions the Texas Legislature adopted in 2017 pertaining to medication synchronization plans for the filling or refilling of multiple prescriptions. See Act of May 23, 2017, 85th Legislature, Regular Session, R.S. §1 (House Bill 1296) (enacting Texas Insurance Code chapter 1369, subchapter J). Consistent with Texas Insurance Code chapter 1369, subchapter J, the amendments allow a Texas Medicaid fee-for-service enrollee with a chronic illness to work with the state, the prescribing provider, and a pharmacist to the refill dates of multiple prescriptions so that the enrollee can pick up filled refills on a single day each month as opposed to having to make multiple pharmacy visits to obtain different prescription medications with different refill dates.

Other amendments reflect the use of a drug's acquisition cost in calculating reimbursement as required under the Medicaid State Plan and 42 CFR §447.512. The amendments specify that HHSC calculates pharmacy reimbursement for all medications using a drug's acquisition cost or the usual and customary price charged to the general public.

The amendments also define necessary terms and clarify that a limited set of home health supplies is available through the pharmacy benefit.

COMMENTS

The 30-day comment period ended January 28, 2019.

During this period, HHSC did not receive any comments regarding the proposed rules.

DIVISION 2. ADMINISTRATION

1 TAC §354.1831

STATUTORY AUTHORITY

The amendments are adopted under the following statutes: Texas Government Code §531.0055 and §531.033, which require the HHSC Executive Commissioner to adopt rules necessary to carry out HHSC's duties and to provide services; Texas Government Code §531.302(a), which requires the HHSC Executive Commissioner to adopt rules for the state prescription drug program; Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; Texas Human Resources Code §32.021(c), which requires the HHSC Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program; and Texas Insurance Code, chapter 1369, subchapter J, which requires a process for adopting medical synchronization plans.

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 March 26, 2019.

TRD-201900924
Karen Ray
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DIVISION 4. LIMITATIONS

1 TAC §354.1867

STATUTORY AUTHORITY

The amendments are adopted under the following statutes: Texas Government Code §531.0055 and §531.033, which require the HHSC Executive Commissioner to adopt rules necessary to carry out HHSC's duties and to provide services; Texas Government Code §531.302(a), which requires the HHSC Executive Commissioner to adopt rules for the state prescription drug program; Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; Texas Human Resources Code §32.021(c), which requires the HHSC Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program; and Texas Insurance Code, chapter 1369, subchapter J, which requires a process for adopting medical synchronization plans.

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-201900925
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DIVISION 7. TEXAS DRUG CODE INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

1 TAC §354.1921

STATUTORY AUTHORITY

The amendments are adopted under the following statutes: Texas Government Code §531.0055 and §531.033, which require the HHSC Executive Commissioner to adopt rules necessary to carry out HHSC's duties and to provide services; Texas Government Code §531.302(a), which requires the HHSC Executive Commissioner to adopt rules for the state prescription drug program; Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; Texas Human Resources Code §32.021(c), which requires the HHSC Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program; and Texas Insurance Code, chapter 1369, subchapter J, which requires a process for adopting medical synchronization plans.

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 March 26, 2019.

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Karen Ray
Chief Counsel
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For further information, please call: (512) 462-6271

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §§355.8541, 355.8548, 355.8551

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8541, concerning Legend and Non-legend Medications; §355.8548, concerning 340B Covered Entities; and §355.8551, concerning Professional Dispensing Fee.

The §§355.8541, 355.8548, and 355.8551 are adopted without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8521), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments align the Medicaid/CHIP Pharmacy rules with the current Medicaid State Plan and 42 CFR §447.512. The amended federal regulations implemented drug reimbursement changes made to the Medicaid Drug Rebate Program by the Affordable Care Act. The amendments do not constitute a change to current pharmacy reimbursement under Medicaid fee-for-service (FFS).

COMMENTS

The 30-day comment period ended January 28, 2019.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under the following statutes: Texas Government Code §531.0055, which provides that the HHSC Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021(a) and Texas Human Resources Code §32.021(a), which authorize HHSC to operate the Medicaid program; Texas Government Code §531.021(b-1), which requires the HHSC Executive Commissioner to adopt rules governing the determination of rates for Medicaid payments; Texas Government Code §531.021(d), which authorizes the HHSC Executive Commissioner to provide for payment of Medicaid rates in accordance with applicable federal law; Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad authority to adopt rules to carry out HHSC's duties; Texas Government Code §531.302(a), which requires the HHSC Executive Commissioner to adopt rules for the state prescription drug program; and Texas Human Resources Code §32.021(c), which requires the HHSC Executive Commissioner to adopt rules as necessary to properly and efficiently operate the Medicaid program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2019.

TRD-201900927
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Proposal publication date: December 28, 2018
For further information, please call: (512) 462-6271

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

SUBCHAPTER E. CONTRACT MANAGEMENT FOR DSHS FACILITIES AND CENTRAL OFFICE

1 TAC §392.411

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §392.411, concerning Award of Construction Contracts in Title 1, Part 15, Chapter 392, Subchapter E of the Texas Administrative Code (TAC). The repeal is adopted without changes to the proposed text as published in the January 11, 2019, issue of the *Texas Register* (44 TexReg 174), and, therefore, will not be republished.

BACKGROUND AND JUSTIFICATION

Texas Health and Safety Code, §551.007, requires the HHSC Executive Commissioner to design, construct, equip, furnish,

and maintain buildings and improvements authorized by law at facilities under HHSC's jurisdiction. Texas Government Code, §531.0055(e), (f)(4), and (j), also task the Executive Commissioner with the administrative duties of contracting and purchasing and adopting rules necessary to implement these duties. TAC §392.411 requires HHSC to give notice of its intent to award a construction contract by publishing an invitation for bids (IFB) notice twice in two newspapers of general circulation.

The repeal of TAC §392.411 will allow posting of construction contracts on the Electronic State Business Daily and through the use of plan rooms according to state statute. Texas Government Code, Chapter 2269, governs the various procurement methods available for construction contracts. The current administrative rule restricts the procurement method to only one type, and an IFB is not always the most appropriate procurement method for construction contracts. HHSC should determine the proper procurement method on a case-by-case basis pursuant to Chapter 2269 in order to best meet the business objective and project goals of each procurement. Therefore, HHSC determined that the repeal of §392.411 is necessary to enable the procurement of construction contracts in the most fiscally sound and statutorily compliant manner possible.

COMMENTS

The 30-day comment period ended February 10, 2019. During the comment period, HHSC received one comment from the Texas Press Association against the rule repeal.

Comment: The Texas Press Association stated that repeal of the rule would eliminate needed public notice requirements and would allow HHSC to decide the amount and type of notice required with no oversight regarding the decision.

Response: HHSC declines to make the requested change to the proposed repeal of §392.411. The Texas Press Association's concerns are unwarranted and fail to take into account existing state statutes. HHSC is required to follow state procurement laws regarding the public posting of procurement opportunities as well as the requirements of Texas Government Code Chapter 2269 concerning the contracting and delivery procedures for construction projects. Repealing the administrative rule will not prevent HHSC from publishing notice in a newspaper if the notice is deemed appropriate. However, HHSC will not be required to do so if it determines the statutorily mandated notice is sufficient.

STATUTORY AUTHORITY

The rule repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The rule repeal affects Government Code §531.0055(f)(4), which provides the Executive Commissioner with authority to contract for the Health and Human Services System, and Health and Safety Code §551.007, which requires the Executive Commissioner to build, furnish, and maintain buildings.

The rule repeal is consistent with Government Code §531.00553 and Government Code Chapter 2269.

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 April 1, 2019.

TRD-201900972
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Effective date: April 21, 2019
Proposal publication date: January 11, 2019
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. FOOD DISTRIBUTION AND PROCESSING

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Chapter 24, Subchapter A, Food Distribution Program, §§24.101 - 24.122; Subchapter B, The Texas Commodity Assistance Program (TEXCAP), §§24.601 - 24.611; and Subchapter C, Commodity Supplemental Food Program, §§24.701 - 24.715, without changes to the proposal published in October 12, 2018, issue of the *Texas Register* (43 TexReg 6726). Chapter 24 is adopted for repeal to eliminate outdated references to the Department of Human Services, the previous administrator of the Food Distribution Program, and reiterations of Federal statutes, thus simplifying the rules and reducing confusion to the public and program participants.

The Department did not receive any comments on the proposed repeal in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6726).

Concurrently at the time of this adoption, new Title 4, Part 1, Chapter 26, Subchapter D, relating to The Emergency Food Assistant Program (TEFAP), has been filed for adoption. The new adopted rules for TEFAP in Chapter 26 are adopted to replace existing outdated rules in Chapter 24 for TEXCAP.

SUBCHAPTER A. FOOD DISTRIBUTION PROGRAM

4 TAC §§24.101 - 24.122

This repeal is adopted under §12.0025 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary to administer the Food Distribution Program and the Commodity Supplemental Food Program, as well as §12.016, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the adoption is Chapter 12 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201900909

Jessica Escobar
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Effective date: April 15, 2019
Proposal publication date: October 12, 2018
For further information, please call: (512) 463-4075

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SUBCHAPTER B. THE TEXAS COMMODITY ASSISTANCE PROGRAM (TEXCAP)

4 TAC §§24.601 - 24.611

This repeal is adopted under §12.0025 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary to administer the Food Distribution Program and the Commodity Supplemental Food Program, as well as §12.016, Code which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the adoption is Chapter 12 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201900910
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Effective date: April 15, 2019
Proposal publication date: October 12, 2018
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SUBCHAPTER C. COMMODITY SUPPLEMENTAL FOOD PROGRAM

4 TAC §§24.701 - 24.715

This repeal is adopted under §12.0025 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary to administer the Food Distribution Program and the Commodity Supplemental Food Program, as well as §12.016, Code which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the adoption is Chapter 12 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201900911
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Proposal publication date: October 12, 2018
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CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER D. THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)

4 TAC §§26.101 - 26.112

The Texas Department of Agriculture (Department) adopts new Title 4, Part 1, Chapter 26, Subchapter D, The Emergency Food Assistance Program (TEFAP), §§26.101 - 26.112, with changes to the proposal published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7021) therefore the rules will be republished. The adopted rules replace current program rules set forth for the Texas Commodity Assistance Program (TEXCAP), Chapter 24, Subchapter B, §§24.101 - 24.122, which have contemporaneously been adopted for repeal at the time of this submission.

The adopted new rules enable the Department to administer TEFAP in strict accordance with the provisions of Title 7, Part 250 of the Code of Federal Regulations (CFR), pertaining to Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction, and 7 CFR Part 251, pertaining to The Emergency Food Assistance Program. The adopted rules remove outdated references and duplicative rules which were previously included in TEXCAP, Subchapter B, Chapter 24 of the Administrative Code.

The Department did not receive any comments on the proposal.

This adoption is made under §12.0025 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary to administer The Emergency Food Assistance Program, as well as §12.016, which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by the adoption is Chapter 12 of the Texas Agriculture Code.

§26.101. Authority and Purpose.

(a) Authority. Pursuant to an agreement with the USDA, the TDA administers TEFAP for the state of Texas, in accordance with 7 CFR Part 250, 7 CFR Part 251, and 2 CFR Part 200, as applicable.

(b) Purpose. The purpose of TEFAP is to serve congregate meals and to distribute food to eligible households.

§26.102. Terms and Definitions.

In addition to terms and definitions set out in 7 CFR Parts 250 and 251, and 2 CFR Part 200, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In the event of a conflict between a definition in this section and TDA guidance, the definition in this section shall prevail. In the event of a conflict between a definition in this section and federal law, the provisions of federal law, whether statute, regulation or guidance, shall prevail.

(1) Allocation--A process of designating entitlement.

(2) CFR--Code of Federal Regulations.

(3) Compliance review--A review conducted by TDA of a CE or its sub-distributing agencies; or a review of a sub-distributing agency conducted by a CE.

(4) Congregate meal--A meal prepared with USDA Foods and provided to persons who gather in a congregate setting to participate.

(5) Congregate setting--A place where people gather to receive meals prepared with USDA Foods.

(6) Contracting entity (CE)--An entity that holds a TEFAP agreement with TDA.

(7) Corrective action plan (CAP)--A plan developed by a CE or sub-agency to correct deficiencies or noncompliance findings relating to the receipt and use of USDA Foods.

(8) Emergency feeding organization (EFO)--A public or private, nonprofit organization that provides nutrition assistance to relieve situations of emergency and distress through the provision of food to eligible persons.

(9) Household--An individual or group of related or unrelated individuals (excluding boarders and residents of institutions) who live together as a single economic unit and customarily purchase and prepare food in common.

(10) ID--Identification.

(11) Letter of Credit amount--The reimbursement limit during the contract year.

(12) Participant--A person that participates in TEFAP.

(13) Policy--Applicable federal and state statutes, regulations and other laws, along with written instructions, guidance, handbooks, manuals, and other documents issued by USDA or TDA to clarify or explain existing laws and regulations. TDA may communicate TEFAP policy by the TEFAP Handbook; email; forms and form instructions; reference in contract; and any other type of communication. TDA may implement policy changes prior to amending state rules, as required by federal laws and regulations, or as needed to implement federal or state laws and regulations.

(14) Recipient--A person or household receiving USDA Foods.

(15) Service area--The specific geographical area served by a single TEFAP CE. Service areas are determined, at TDA's discretion, by predefined areas within the state, including, but not limited to, the following: county or counties; zip codes; or neighborhoods.

(16) Site--a location that holds a TEFAP agreement with either a CE or a sub-distributing agency.

(17) Sub-agency--The collective term for sub-distributing agencies and sites.

(18) Sub-distributing agency--An entity that holds a TEFAP agreement with a CE and a site.

(19) TDA--Texas Department of Agriculture.

(20) TEFAP--The Emergency Food Assistance Program.

(21) USDA--United States Department of Agriculture.

§26.103. Agreements.

If a CE fails to comply with the terms or conditions of its *USDA Foods Agreement Between Contracting Entity and Texas Department of Agriculture,* TDA may:

(1) Immediately terminate or suspend the agreement; and/or

(2) Modify the terms of any agreement to ensure the availability of USDA Foods to eligible groups in all areas (including areas where poor economic conditions exist), and in a manner equitable to CEs.

§26.104. Selection of Contracting Entities.

(a) Selection criteria. CEs shall be selected for participation in TEFAP based on the following criteria:

(1) The organization's geographic location;

(2) The number of eligible persons who live in the organization's service area, as identified by poverty, unemployment, or other statistics;

(3) The organization's food storage capacity;

(4) The organization's ability to receive, handle, safeguard, and distribute large volumes of product;

(5) The organization's ability to effectively and efficiently distribute USDA Foods throughout its service area with or without access to limited federal funds earmarked to reimburse certain allowable administrative costs;

(6) The organization's ability and willingness to submit financial statements, reports, or other information requested or required by TDA;

(7) The organization's access to donated food and funds from sources other than USDA;

(8) The organization's willingness to supplement USDA Foods with non-USDA Foods and provide both to eligible sub-agencies;

(9) The organization's existing food distribution channels;

(10) The organization's activity in developing, or assisting other entities to develop, distribution or feeding sites to ensure service to all parts of its service areas;

(11) The organization's connection to and level of cooperation with organizations that have similar operations and goals, including a goal to ensure the availability of food assistance in all areas of the state;

(12) The organization's ability and willingness to network with and distribute USDA Foods to other food providers;

(13) The organization's willingness and capacity to accomplish the following:

(A) Serve all participants through CE services and/or through sub-agency services;

(B) Handle program administration, distribution, record maintenance, and eligibility determinations; and

(C) Comply with all program requirements as required by policy and guidance from TDA and USDA;

(14) The organization's total caseload based on services provided to a specific recipient group within any service area; and

(15) The organization's agreement that providing false or fraudulent information in conjunction with an application for participation is subject to penalties.

(b) EFO agreements. TDA reserves the right to make agreements with any type of EFO to ensure program access.

§26.105. Responsibilities of Contracting Entities.

(a) Advertise. CEs must advertise distributions of USDA Foods using methods including, but not limited to, the following:

(1) The media (internet, TV, radio, and newspapers);

(2) Civic and religious organizations;

(3) City and county governments; and

(4) Social service organizations.

(b) Public information notices. CEs must ensure that sites notify the public of the locations, days and hours of distribution.

(c) Eligibility determination. Household eligibility determinations must be made by a CE or sub-agency based on requirements set forth in §26.106 of this title (relating to Eligibility Criteria for Households).

(d) Confidentiality. CEs must protect confidential participant information as required by federal and state statute.

(e) Shared maintenance. CEs may charge fees that are allowed by TDA for shared maintenance.

(f) Availability of records. CEs must make records available to TDA upon request. Such records shall include CE findings concerning or relating to sub-agencies.

(g) Agreements. CEs may terminate or suspend agreements, or take other appropriate action, for sub-agencies' noncompliance.

§26.106. Eligibility Criteria for Households.

Only TDA and USDA can establish eligibility criteria. CEs shall only determine eligibility based on paragraphs (1) through (4) of this subsection.

(1) Household eligibility. CEs must determine household eligibility at least annually based on eligibility criteria.

(A) Income. Except as otherwise specified, the applicant household's gross yearly or monthly income (before deductions) in relation to household size must not exceed 185% of the federal poverty guidelines.

(B) Crisis food assistance. An applicant household whose income exceeds 185% of the federal poverty guidelines and that has incurred the costs of a household crisis may be eligible for crisis food assistance.

(C) Categorical eligibility. An applicant household is automatically (categorically) eligible for USDA Foods if it currently receives assistance from one of the following programs: Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or non-institutional Medicaid benefits.

(2) Residency for Households.At the time of application, households are required to reside within the service area, but not for any specific length of time.

(A) CEs and sub-agencies may ask for, but must not require, participants to provide proof of residency. CEs and sub-agencies must provide USDA Foods to all participants even if they cannot or will not provide proof of residency. CEs and sub-agencies must clarify the following points to applicants and participants:

(i) The inability or unwillingness to provide proof of residency is not a barrier to participation.

(ii) Participants will receive USDA Foods without proof of residency.

(B) A CE may make exceptions for the service area.

(3) Identity for Households.

(A) CEs and sub-agencies may request but must not require any applicant or participant to provide proof of ID.

(B) CEs and sub-agencies must provide USDA Foods to all participants even if they cannot or will not provide ID. CEs and sub-agencies are required to ensure that applicants and participants understand the following:

(i) The inability or unwillingness to provide proof of ID shall not prevent participation.

(ii) Participants will receive USDA Foods, regardless of failure to provide proof of ID.

(4) Citizenship. There are no citizenship requirements. CEs and sub-agencies must not require any applicant or participant to prove citizenship through any means whatsoever.

§26.107. Congregate Meals.

(a) Any person has a right to request and to receive a congregate meal containing USDA Foods.

(b) There are no residency requirements for receipt of congregate meals, and CEs and sub-agencies shall not impose residency requirements.

(c) CEs and sub-agencies shall not request proof of ID from participants for congregate meals.

(d) There are no eligibility requirements for receipt of congregate meals, and CEs and sub-agencies shall not impose eligibility requirements.

(e) There are no citizenship requirements. CEs and sub-agencies shall not require any applicant or participant to prove citizenship through any means whatsoever.

§26.108. Allocation and Distribution.

(a) Allocation to CEs. TDA uses a "60/40" formula to allocate entitlement to CEs. The formula is based 60% on the number of persons in a county who have incomes at or below the official poverty line, and 40% on the number of unemployed persons.

(1) TDA has the discretion to allocate entitlement by another method, such as according to historical or projected usage rates (the number of meals and/or households served).

(2) TDA may reserve an amount of administrative funds, as necessary, to add new CEs during a contract year.

(3) TDA determines service areas and allocates USDA Foods to CEs that serve within each service area.

(4) TDA reserves the right to contract with and allocate entitlement to any type of EFO to ensure the availability of TEFAP to all persons and households according to service areas.

(b) Allocation to sub-agencies. CEs' allocations to eligible sub-agencies are subject to TDA's review and approval. CEs must allocate a share of USDA Foods to sub-agencies according to the priorities specified by agreements.

(c) Distribution to recipients. Sub-agencies' distribution times and methods are subject to TDA or a CE's review and approval.

(1) Sub-agencies must distribute foods at least monthly unless TDA grants an exception to the sub-agency to provide distribution less frequently.

(2) TDA recommends distribution on a first come, first served basis.

(d) Distribution quantities. A CE or sub-agency may determine the quantity of USDA Foods to be included in congregate meals and in household distribution. The quantity provided to each participant is subject to TDA or a CE's review and approval.

(1) Congregate meals. The quantity of USDA Foods in congregate meals is based on the following considerations:

(A) Available resources;

(B) The days and hours of operation;

(C) The number of people requesting meals;

(D) The customary size of food portions served to adults or to categories of people with special nutritional needs; and

(E) Other factors.

(2) Households. The quantity of USDA Foods in food packages is based on the following considerations:

(A) Available resources;

(B) The days and hours of operation;

(C) The number of households requesting USDA Foods;

(D) Household size; and

(E) Other factors.

§26.109. Reimbursement.

(a) The actual reimbursement rate or reimbursement amount depends on the amount of available administrative funds and the allocation method used.

(b) TDA will notify CEs of any changes to the allocation and/or the reimbursement rate or amount.

(c) To the extent that administrative funds are available, TDA will reimburse CEs their allowable costs up to Letter of Credit amounts.

(d) CEs must submit monthly reimbursement claims, including all allowable costs of distributing USDA Foods and other donated foods.

(e) At the end of each contract year, TDA will reallocate any uncommitted administrative funds, first to reimburse any remaining costs of distributing USDA Foods, and second to reimburse the costs of distributing non-USDA Foods.

(1) Before reallocation, TDA may notify CEs of a cutoff date after which TDA will not reimburse monthly claims.

(2) A cutoff date enables TDA to reallocate administrative funds which were not committed during the contract year.

(f) Shared maintenance fees are not an allowable administrative cost.

(1) CEs may directly charge sub-agencies their usual and customary shared maintenance fees.

(2) At its discretion, TDA can require CEs to reduce or waive shared maintenance fees.

(g) To the extent authorized by law, TDA may change policy regarding the costs associated with distributing USDA Foods as necessary to ensure the equitable distribution of USDA Foods. Prior to making any policy change, TDA will consult with the affected CEs and other stakeholders.

§26.110. Audits.

CEs are subject to the audit requirements specified in federal regulations.

§26.111. Corrective Action Plan.

(a) TDA may amend or modify a CAP based on new information, changes in circumstances, and the CE's progress in CAP implementation.

(b) A CE may amend or modify a sub-agency's CAP based on new information, changes in circumstances, or in CAP implementation.

(c) TDA may extend due dates of completion for CEs that have made good faith efforts, as defined by TDA, to correct deficiencies or to comply with requirements.

(d) A CE may extend the time frames for a sub-agency to implement a CAP based on the sub-agency's good faith efforts, as defined by the CE, to correct deficiencies or to comply with program requirements.

§26.112. Compliance Reviews.

(a) TDA shall conduct compliance reviews of CEs and sub-agencies as it deems necessary.

(b) TDA maintains the right to review a CE's procurement and other program related documents at any time, upon request. Failure to provide any required documents shall result in findings.

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 March 26, 2019.

TRD-201900912
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: April 15, 2019
Proposal publication date: October 26, 2018
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.7

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment of 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.7 Program Regulations and Requirements with changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8197). The purpose of amendment is to provide greater clarity to property owners participating in the 811 Program Rental Assistance Program on the Department's response process when notified of a vacant unit by the property.

Tex. Gov't Code §2001.0045(b), does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the only amendment to the rule provides greater

specificity for how the Department will respond when a participating property owner notifies the Department of an available unit. There are no costs associated with this rule, therefore no costs or impacts warrant 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.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the amendment would be in effect, the amendment does not create or eliminate a government program, but relates to a limited revision providing improved clarity in the administration of the Section 811 Project Rental Assistance Program (Section 811 PRA).

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

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

4. The 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 amendment is not creating a new regulation.

6. The action will amend an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity of the rules governing the administration of the Section 811 PRA Program.

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

8. The 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 amendment and determined that the amendment will not create an economic effect on small or micro-businesses or rural communities.

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. This rule relates to the Department ensuring that Owners of Eligible Multifamily Properties have assurance that they are able to maintain occupancy of their Developments while participating in the Section 811 PRA Program. Other than an Owner who may be considered to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rule. However, if an Owner considers itself a small or micro-business, this rule provides greater assurance that their Development's occupancy will not be disrupted by their participation in the Section 811 PRA Program.

3. The Department has determined that because the rule applies only to Owners that have made a commitment to the Department under other Multifamily Programs, 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 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 amendment will be in effect there would be no economic effect on local employment because the rule relates only to how the Department will respond to existing requirements of Owners participating in the Section 811 PRA Program; 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 provides assurance about an existing practice by the Department, 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 amendment is in effect, the public benefit anticipated as a result of the amended section would be greater communication between the Department and Owners. There will not be economic costs to individuals required to comply with the amended 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 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.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held December 21, 2018, through January 21, 2019, to receive input on the amended section. Public comment and reasoned response are provided below. Two public comments were received from one commenter: Doni Green, North Central Council of Governments and HHSC Promoting Independence Advisory Committee representative to the Housing and Health Services Coordination Council (#1).

General Comment One - (Commenter (1))

COMMENT SUMMARY: The commenter states that: "The proposed amendment presents a reasonable approach to improving communication between 811 properties and TDHCA and allowing property owners to timely fill vacancies."

STAFF RESPONSE: TDHCA appreciates the feedback provided. No change is being made in response to this feedback.

General Comment Two - (Commenter (1))

COMMENT SUMMARY: The commenter states that the proposed amendment that was posted contained a sentence fragment that was repeated.

STAFF RESPONSE: TDHCA appreciates the commenter pointing out the typographical error. This has been corrected in the final rule.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

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

§8.7. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.610 (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the

initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any

time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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 March 26, 2019.

TRD-201900914
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
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Proposal publication date: December 21, 2018
For further information, please call: (512) 475-1762

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 115. MIDWIVES

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §§115.1, 115.70, 115.100, 115.112 - 115.115, 115.117 - 115.119; adopts the repeal of existing rules §115.90 and §115.111; and adopts new §115.111, regarding the Midwives program.

The amendments to §§115.1, 115.70, 115.100, 115.112 - 115.115 and 115.117, and new §115.111, are adopted with changes to the proposed text as published in the September 28, 2018, issue of the *Texas Register* (43 TexReg 6426). The rules will be republished. The repeal of existing rule §115.90 and §115.111, and amendments to §115.118 and §115.119 are adopted without changes to the proposed text as published in the September 28, 2018, issue of the *Texas Register* (43 TexReg 6426). The rules will not be republished.

JUSTIFICATION AND EXPLANATION OF THE RULES

The adopted rules implement House Bill (HB) 2886 and House Bill (HB) 4007, 85th Legislature, Regular Session (2017). Collectively these bills:

- remove criminal, civil, and administrative liability for licensed midwives who are unable to administer prophylaxis to a newborn's eyes because of an objection from a parent, managing conservator, or guardian;

- mandate that midwives document objections from the parent, managing conservator, or guardian in the child's medical record; and

- require the Department to post a list of licensed midwives on its internet site but remove the requirement to provide the list to counties.

The adopted rules also implement recommendations of the Midwives Advisory Board to update the standard of practice requirements by:

- requiring midwives to either terminate the midwife-client relationship or collaborate care with a physician, or a qualified delegate of a physician, when a client refuses a non-emergency transfer to a physician or a qualified delegate of a physician;

- specifying that an emergency exists when a client refuses a transfer deemed necessary by the midwife during labor, delivery, or six hours after delivery, and requiring the midwife to call 911 and provide further care until the arrival of EMS, at which point the midwife may only provide further care if requested by EMS;

- clarifying and expanding the list of prenatal conditions which require the midwife to recommend transfer of a client to a physician or a qualified delegate of a physician; and

- requiring midwives, when a client reaches 42.0 weeks gestation and is not yet in labor, to either: (1) transfer the client to a physician or a qualified delegate of a physician; or (2) collaborate care with a physician and obtain appropriate antenatal testing.

SECTION-BY-SECTION SUMMARY

The adopted amendments to §115.1 add new definitions and renumber the section accordingly.

The adopted amendments to §115.70 update standards of conduct to reflect industry best practices by adding requirements to:

- use generally accepted standards of midwifery care;

- exercise ordinary diligence in the provision of midwifery care;

- act competently in the provision of midwifery care; and

- refrain from knowingly making material misrepresentations to the Department or a client.

The adopted repeal of §115.90 removes the requirement for the Department to provide a copy of the midwife roster to counties.

The adopted amendments to §115.100 update the standards for the practice of midwifery to reflect best practices by adding a requirement to document assessments of clients for factors which might preclude a client from receiving midwifery care.

The adopted repeal of existing §115.111 eliminates current rules for inter-professional care, which are being replaced with a new §115.111.

The adopted new §115.111 establishes the role of the midwife in coordinating care with other health care providers.

The adopted amendments to §115.112 determine when and how a midwife may terminate a client relationship.

The adopted amendments to §115.113 clarify when a midwife must call 911 and transfer care in an emergency situation.

The adopted amendments to §115.114 clarify prenatal care requirements by:

- clarifying the list of conditions that require a midwife to recommend referral;

- clarifying and expanding the list of conditions that require a midwife to recommend transfer; and

- requiring a midwife, when a client reaches 42.0 weeks gestation and is not yet in labor, to either: (1) transfer the client to a physician or a qualified delegate of a physician; or (2) collaborate care with a physician and obtain appropriate antenatal testing.

The adopted amendments to §115.115 clarify requirements during labor and delivery.

The adopted amendments to §115.117 clarify newborn care during the first six weeks after birth by updating the list of conditions that require a midwife to recommend referral.

The adopted amendments to §115.118 clarify standards for administration of oxygen by a midwife to a mother or newborn.

The adopted amendments to §115.119 remove criminal, civil, and administrative liability for licensed midwives who are unable to administer prophylaxis to a newborn's eyes because of an objection from a parent, conservator, or guardian.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 28, 2018, issue of the *Texas Register* (43 TexReg 6426). The deadline for public comment was October 29, 2018. The Department received 26 comments during the 30-day public comment period, including five late comments. One joint comment was submitted by the Texas Medical Association, the Texas Association of Obstetricians and Gynecologists, and the Texas District of the American College of Obstetricians and Gynecologists (hereinafter referred to collectively as "the Physician Associations"). One comment was submitted by the Association of Texas Midwives. The public comments received with the Department's responses are summarized below.

§115.1. Definitions.

Comment: The Physician Associations recommend changing the definition of "collaboration" in proposed §115.1(6) to expressly mention physicians as a profession with whom midwives may collaborate and to provide more consistency in terminology by choosing between "health care practitioner" used in this definition and "health care professional" used in other definitions.

Department Response: The Department agrees with the comment and has amended proposed §115.1(6) to read: "Collaboration--The process in which a midwife and a physician or another licensed health care professional of a different profession jointly manage the care of a woman or newborn according to a mutually agreed-upon plan of care."

Comment: The Physician Associations recommend changing the definition of "consultation" in proposed §115.1(8) to expressly mention physicians as a profession with whom midwives may consult and to require that a consultation be done with a licensed health care professional of a different profession, rather than with just another "lay midwife."

Department Response: The Department does not use the term "lay midwife" because Texas-licensed midwives are licensed health care professionals. However, the Department otherwise agrees with the comment and has amended proposed §115.1(8) to read: "Consultation--The process by which a midwife, who maintains responsibility for the woman's care, seeks the advice of a physician or another licensed health care professional or member of the health care team of a different profession."

Comment: The Physician Associations recommend changing the definition of "referral" in proposed §115.1(19) by specifying that referral to a physician must be to a Texas-licensed physician and removing the phrase "working in association with a licensed physician" and replacing it with the phrase "working under supervision and delegation of a physician."

Department Response: The Department agrees with the comment and has amended proposed §115.1(19) to read: "Referral--The process by which a midwife directs the client to a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under supervision and delegation of a physician." Section 115.1(13) defines "physician" as "[a] physician licensed to practice medicine in Texas by the Texas Medical Board."

Comment: The Physician Associations recommend changing the definition of "transfer" in proposed §115.1(22) by: expressly mentioning physicians as a profession to whom midwives may transfer patients' care; specifying that transfer to a physician must be to a Texas-licensed physician; and removing the phrase "working in association with a licensed physician" and replacing it with the phrase "working under supervision and delegation of a physician."

Department Response: The Department agrees with the comment and has amended proposed §115.1(22) to read: "Transfer--The process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under the supervision and delegation of a physician." Section 115.1(13) defines "physician" as "[a] physician licensed to practice medicine in Texas by the Texas Medical Board."

§115.70. Standards of Conduct.

Comment: One commenter expressed disapproval of the removal of the word "demonstrated" from §115.70(1)(M) because the commenter believes it is more conclusive to leave it.

Department Response: The Department disagrees with the comment. The Department has determined that the term "demonstrated" is redundant and unnecessary because any enforcement action based on "a lack of personal or professional character in the practice of midwifery" would necessarily require evidence of the midwife's practice that demonstrates such deficiency in character. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.70(1)(N), one commenter stated that the phrase "generally accepted standards of midwifery care" could refer to North American Registry of Midwives (NARM) requirements or be clarified by the Midwifery Model of Care, avoiding the typical medical model of care.

Department Response: The Department has determined that it is preferable to use the proposed language because its breadth can accommodate changes to the standards of midwifery care without reference to any particular organization or model. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.70(1)(P), one commenter asked how the phrase "failure to act competently" will be judged.

Department Response: The issue of whether a midwife has acted competently is a determination that will be made by considering all of the legal provisions and standards applicable to licensed Texas midwives and may, in some circumstances, require expert witness advice and testimony from other midwives with appropriate qualifications. The Department did not make any changes to the proposed rules in response to this comment.

§115.100. Standards for the Practice of Midwifery in Texas.

Comment: The Physician Associations recommend changing proposed §115.100(a)(4) to require midwives to adhere to the Global Standards for Midwifery Education adopted by the International Confederation of Midwives (ICM).

Department Response: The Department disagrees with the comment. The standards adopted by ICM include many issues that fall outside of the scope of midwifery as defined by the Texas Midwifery Act. The ICM standards that do fit the scope of midwifery in Texas are included in the standards adopted by the Midwives Alliance of North America (MANA), which are already referenced in §115.100(a)(4). The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Physician Associations recommend changing §115.100(c)(3) to require midwives to transfer records by adding the phrase "and promptly use" after the word "provide."

Department Response: The comment does not address any current proposed rule change. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.100(d), the Physician Associations support the directive to engage in periodic evaluation and quality assurance but find that it is unclear how the data will be collected, analyzed, and used to improve quality of care. They recommend that TDLR develop a standardized set of guidelines and documentation requirements for the collected data to further quality assurance and improvement.

Department Response: The comment addresses issues that are beyond the scope of the Department's proposed changes to the rule. The Department did not make any changes to the proposed rules in response to this comment.

New §115.111. Coordinating Care with Other Health Care Providers.

Comment: The Physician Associations oppose the authorization under proposed §115.111(b)(1) for a midwife to continue care of a patient (without any additional assistance or consultation with another health professional) after the midwife has already identified some condition that increases the risk of complication and requires a higher level of care. They point out that this is outside the scope of midwifery as defined in the Texas Midwifery Act.

Department Response: The Department agrees with the comment and has amended proposed §115.111(b) by adding the phrase "who is at a low risk of developing complications" to clarify that the rule does not apply to conditions that require a higher level of care. Proposed §115.111(b) has been amended to read: "If a client who is at a low risk of developing complications elects not to accept a referral or a physician or associate's advice, the midwife shall: (1) continue to care for the client after discussing and documenting the risks in the midwifery record, which shall include informing the client that her condition may worsen and require transfer; (2) seek a consultation; (3) manage the client in collaboration with an appropriate health care professional; or (4) terminate care."

Comment: The Physician Associations recommend changing the language in proposed §115.111(c) to better match the language in Occupations Code §203.401(2)(A) relating to the administration of prescription drugs and by removing the passive voice and ambiguity in the phrase "must be obtained."

Department Response: The Department agrees with the comment and has amended proposed §115.111(c) to read: "If a midwife administers any prescription medication to a client or her newborn other than oxygen and eye prophylaxis, the midwife must do so in accordance with standing delegation orders from and under the supervision of a physician licensed in Texas. The midwife shall ensure that the orders are current (renewed annually) and comply with state law and the rules of the Texas Medical Board."

Comment: With regard to proposed §115.111(c), one commenter stated that requiring standing delegation orders from a physician creates a barrier to care and an undue burden on the healthcare delivery system and that TDLR should develop a training and certification program that allows midwives full access to routine, life-saving medications.

Department Response: The Department does not have the statutory authority to make the change requested by the comment. The Texas Legislature determines who has the authority to prescribe and administer prescription medications in Texas, so making the change suggested by this comment would require legislative action. The Department did not make any changes to the proposed rules in response to this comment.

§115.112. Termination of the Midwife-Client Relationship.

Comment: With regard to proposed §115.112(2)(A), the Physician Associations express concern that the reduction in days of required notice could increase the risk that the patient will experience a lapse in care and will increase the burden on the patient to identify a new health care provider willing to accept responsibility for her care. They suggest adding a requirement to complete a transition of care plan with the patient.

Department Response: The Department disagrees with the comment. Occupations Code §203.351(b)(5) already requires the informed choice and disclosure statement to include a description of medical backup arrangements, so there should not be an increased risk of the client experiencing a lapse in care due to the decrease in the number of days of required notice of the midwife's termination of care. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.112(2)(A), one commenter supported the change from 30 days to 14 days written notice because it is more reasonable.

Department Response: The Department appreciates this comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.112(3)(B), the Physician Associations state that there is no statutory authority for a midwife to jointly manage the care of a patient because the Texas Midwifery Act does not contain the word "collaboration."

Department Response: The Department disagrees with the comment. Occupations Code §203.151(a-1)(1) provides that "[t]he commission shall adopt rules prescribing the standards for the practice of midwifery in this state..." The Department has determined that this language is intentionally broad to provide the Commission flexibility to adopt concepts not specifically articulated in the statutory language, as long as they do not exceed the scope of the statutory language. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.112(3)(B), the Physician Associations express concern that if the midwife already recognizes that a transfer may be in the patient's best interest,

there is nothing to gain from the midwife's joint management of the patient with another health care professional because the conditions for which a transfer recommendation is required are serious conditions that cannot be treated properly by a person who does not have advanced medical training.

Department Response: The Department disagrees with the comment. Proposed §115.112(3) is meant to address situations where the client refuses a transfer. The Department has determined that when the client refuses transfer, it is better for the midwife to have the option to continue care in collaboration with a health care professional than it is for the midwife to be forced to terminate the midwife-client relationship and increase the likelihood of an unassisted birth. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Physician Associations recommend changing proposed §115.112(3)(B) to read: "manage the client in collaboration with a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under supervision and delegation of a physician."

Department Response: The Department agrees with the comment and has amended proposed §115.112(3)(B) to read: "manage the client in collaboration with a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under the supervision and delegation of a physician."

§115.113. Transfer of Care in an Emergency Situation.

Comment: With regard to proposed §115.113(b), the Association of Texas Midwives suggested removing the phrase "unless requested by first responders" because a midwife might find herself in a situation where she would be drawn back into the primary care provider position or, if she refused to continue care, may find herself compromised.

Department Response: The Department agrees with the comment and has amended proposed §115.113(b) to read: "It is an emergency if, during labor, delivery, or six hours immediately following placental delivery, the midwife determines that transfer is necessary and the client refuses transfer. The midwife shall call 911 and provide further care as indicated by the situation. The midwife shall not provide any further care after the arrival of emergency medical service (EMS) personnel but may do so if requested by EMS personnel."

Comment: With regard to proposed §115.113(b), four commenters had concerns, that first responders, such as police officers and firefighters, may not have sufficient medical training and knowledge to take over care and may not request help from the midwife.

Department Response: The Department agrees with the comment and has amended proposed §115.113(b) to read: "It is an emergency if, during labor, delivery, or six hours immediately following placental delivery, the midwife determines that transfer is necessary and the client refuses transfer. The midwife shall call 911 and provide further care as indicated by the situation. The midwife shall not provide any further care after the arrival of emergency medical service (EMS) personnel but may do so if requested by EMS personnel."

Comment: With regard to proposed §115.113(b), one commenter stated that midwives often report negative experiences and outcomes due to factors related to emergency medical service (EMS) care. The commenter stated that while the midwife may be the more experienced obstetric provider, EMS has its own policies and procedures to follow. The commenter stated that TDLR should investigate which actions a midwife can take when EMS appears to put a mother or baby at risk.

Department Response: The Department understands that EMS personnel may not have the obstetric knowledge and skills that midwives possess. However, when an emergency situation exists, EMS is necessary to transport the client to a facility where a higher level of care can be provided. It would be outside the scope of midwifery to continue providing sole care of the client in an emergency situation. The midwife may contact the health care professional or institution to whom the client is being transferred to communicate concerns about EMS actions that appear to put the mother or baby at risk. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.113(b), one commenter asked what happens if the client refuses care from the first responders.

Department Response: The midwife would not be authorized to continue sole care of the client in this situation because the client's condition does not qualify as a "normal" labor, delivery, or postpartum period and therefore falls outside of the scope of the Texas Midwifery Act. The Department did not make any changes to the proposed rules in response to this comment.

§115.114. Prenatal Care.

Comment: The Physician Associations expressed concern that the rules do not require planning for emergency transfers and suggested adding the following language to §115.114(a): "The plan of care must include a plan developed with the patient for transfers in emergency situations that accounts for the situations in which a transfer is required and consideration of the licensed health care professionals or institutions that the patient will be transferred to in the event of an emergency."

Department Response: This comment does not address any current proposed rule change. However, it should be noted that Occupations Code §203.351(b)(5) already requires the informed choice and disclosure statement to include a description of medical backup arrangements. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.114(c)(8), ten commenters were concerned that "uterine surgery" is too broad of a term that includes procedures, such as dilation and curettage, which should not preclude an out-of-hospital birth.

Department Response: The Department agrees with the comments and has amended proposed §115.114(c)(8) to read: "previous uterine surgery involving incision into the uterine myometrium, other than a low transverse cesarean section."

Comment: With regard to proposed §115.114(c)(8), the Physician Associations expressed concern that a midwife would be allowed to continue caring for a patient who has had a low transverse cesarean section because vaginal birth after cesarean section has risks and may result in the need for an emergency cesarean section. They suggest changing the language to remove the phrase "other than a low transverse cesarean section."

Department Response: The Department disagrees with the comment. The Department, in consultation with the Midwives Advisory Board, has determined that although vaginal birth after cesarean section involves risks that would require the midwife to recommend referral, it does not constitute a high-risk condition

that would require the midwife to recommend transfer. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to proposed §115.114(c)(8), one commenter stated that the old language is better because it is specific to the uterine fundus.

Department Response: The Department agrees that the published language was too broad, so the Department has amended proposed §115.114(c)(8) to read: "previous uterine surgery involving incision into the uterine myometrium, other than a low transverse cesarean section."

Comment: With regard to §115.114(d), the Association of Texas Midwives suggests changing the proposed language to read "collaborate with a health care professional" instead of "a physician," to better reflect the new proposed definition of "collaboration" as "the process in which a midwife and a health care practitioner of a different profession jointly manage the care of a woman or newborn according to a mutually agreed-upon plan of care."

Department Response: The Department disagrees with the comment because the Department has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), 14 commenters expressed concern that many midwives, especially in rural areas, have limited or no access to physicians willing and able to participate in collaboration or transfer at 42.0 weeks.

Department Response: The Department acknowledges that many midwives, especially in rural areas, have limited access to physicians; however, the Department has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The commenters seem to misunderstand the intent and effect of the proposed rule. Section 115.1(12) already defines "normal childbirth" as "the labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications." This definition already created the requirement of transfer at 42 weeks, but it left some ambiguity about what is meant by "42 weeks." The proposed rule more clearly draws the line at "42.0 weeks" while also adding the option of continuing midwifery care through collaboration with a physician and appropriate antenatal testing. Therefore, rather than limiting the options for midwifery care, the proposed rule is actually expanding the options for midwifery care. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), 11 commenters stated that it is a standard of care for midwives to order appropriate antenatal testing without a collaborating physician.

Department Response: The Department disagrees with the comment because antenatal testing is necessarily done by a physician. The Department has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), seven commenters stated that being 42 weeks gestation does not threaten the lives of most mothers or fetuses, as long as proper monitoring shows no problems.

Department Response: The Department disagrees with the comment because the Department, through consultation with the Midwives Advisory Board, has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), seven commenters submitted suggestions for alternatives to collaboration with a physician that allow the midwife to continue sole care of the client.

Department Response: The Department disagrees with the suggested alternatives because the Department, through consultation with the Midwives Advisory Board, has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), five commenters stated that the proposed change unfairly restricts the mother's right to choose the conditions of her birth.

Department Response: The Department disagrees with the comment because the Department, through consultation with the Midwives Advisory Board, has determined that the risks associated with continued gestation at 42.0 weeks require the advice and assistance of a physician. The commenters seem to misunderstand the intent and effect of the proposed rule. Section 115.1(12) already defines "normal childbirth" as "the labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications." This definition already created the requirement of transfer at 42 weeks, but it left some ambiguity about what is meant by "42 weeks." The proposed rule more clearly draws the line at "42.0 weeks" while also adding the option of continuing midwifery care through collaboration with a physician and appropriate antenatal testing. Therefore, rather than limiting the options for midwifery care, the proposed rule is actually expanding the options for midwifery care. The Department did not make any changes to the proposed rules in response to this comment.

Comment: With regard to §115.114(d), one commenter asked what the midwife is supposed to do when the client refuses collaboration and transfer at 42.0 weeks and the midwife terminates care but is still responsible for care for 14 days.

Department Response: The midwife should not wait until 42.0 weeks to determine whether the client will agree to collaboration or transfer. This determination should be made in advance so that if the client will not agree, the midwife can begin the termination process with sufficient time for the care to be terminated on the date the client reaches 42.0 weeks. The Department did not make any changes to the proposed rules in response to this comment.

§115.115. Labor and Delivery.

Comment: With regard to §115.115(e)(6), 26 commenters opposed the proposed language because it includes conditions which cannot be detected by intermittent auscultation and would require continuous electronic fetal monitoring. Many of these commenters included suggestions for changes that list conditions which can be detected by intermittent auscultation.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

Comment: With regard to §115.115(e)(6), one commenter supported the proposed language and believed that the listed conditions can be detected without continuous electronic fetal monitoring.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

Comment: With regard to §115.115(e)(6), one commenter stated that all obstetric attendants have abandoned the term "non-reassuring" because it is vague, with over 30 definitions, and has been replaced by a 3-tiered system since 2010.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

Comment: With regard to §115.115(e)(6), one commenter stated that the listed patterns include conditions which are present in over 80% of labors and are non-emergent, which would make it nearly impossible for midwives to attend out-of-hospital births.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

Comment: With regard to §115.115(e)(6), one commenter stated that the specificity of the proposed language is problematic because the standards and terminology could change and require further amendments to the rule.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

Comment: With regard to §115.115(e)(6), the Association of Texas Midwives opposes the proposed language because the section has received the greatest number of criticisms.

Department Response: In response to the comments received on this rule, the Midwives Advisory Board recommended amending proposed §115.115(e)(6) to read: "abnormal fetal or uterine monitoring, which includes but is not limited to bradycardia, tachycardia, abnormal rhythm, persistent decelerations after position changes, and uterine tachysystole." However, after considering the concerns raised in public comments and discussing the issue, the Commission believes that further study of this issue is warranted and therefore declines to adopt the proposed amendment to §115.115(e)(6) at this time, leaving the current language in effect. The Commission has directed that this rule be returned to the Board for further consideration. The Department will work with the Board on development of a proposed rule amendment to bring to the Commission at a later date.

§115.117. Newborn Care During the First Six Weeks After Birth.

Comment: With regard to §115.117(c)(4), one commenter stated that it is better to leave the language as it is because it is accepted terminology.

Department Response: The Department disagrees with the comment. The Department has determined that the new language reflects the proper medical standard and is preferable because it provides more specificity. The Department did not make any changes to the proposed rules in response to this comment.

§115.118. Administration of Oxygen.

Comment: With regard to §115.118(a), the Physician Associations express concern that the proposed language could be interpreted to mean that there is no requirement for a midwife to provide oxygen when the client or the newborn require it. The Physician Associations believe that Occupations Code §203.151 requires a midwife to provide oxygen when a client or newborn require it.

Department Response: The Department disagrees with the comment. The relevant statutory language in Occupations Code §203.151(a-1) provides: "The commission shall...(1) adopt rules prescribing the standards for the practice of midwifery in this state, including standards for...(B) administration of oxygen by a midwife to a mother or newborn[.]" The Department does not interpret this language as a requirement for midwives to administer oxygen; rather, the Department interprets the language as a requirement to adopt standards for administration of oxygen to be applied when a midwife chooses to administer oxygen. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Midwives Advisory Board (Board) met on January 8, 2019, to discuss the proposed rules and the comments received. The Board recommended adopting the proposed rules with changes to §115.1 and §115.100, proposed new §115.111, and §§115.112 - 115.115.

At its meeting on March 22, 2019, the Commission adopted the rules with changes as recommended by the Board, with the exception of the proposed amendments to §115.115(e)(6), which the Commission did not adopt. The Commission has directed that this rule be returned to the Board for further consideration.

16 TAC §§115.1, 115.70, 115.100, 115.111 - 115.115, 115.117 - 115.119

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the adoption.

§115.1. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.

(2) Advisory Board--The Midwives Advisory Board appointed by the presiding officer of the Commission with the approval of the Commission.

(3) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(4) Approved midwifery education courses--The basic midwifery education courses approved by the department.

(5) Code--Texas Health and Safety Code.

(6) Collaboration--The process in which a midwife and a physician or another licensed health care professional of a different profession jointly manage the care of a woman or newborn according to a mutually agreed-upon plan of care.

(7) Commission--The Texas Commission of Licensing and Regulation.

(8) Consultation--The process by which a midwife, who maintains responsibility for the woman's care, seeks the advice of a physician or another licensed health care professional or member of the health care team of a different profession.

(9) Department--The Texas Department of Licensing and Regulation.

(10) Executive director--The executive director of the department.

(11) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(12) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(13) Newborn care--The care of a child for the first six weeks of the child's life.

(14) Normal childbirth--The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(15) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board.

(16) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.

(17) Program--The department's midwifery program.

(18) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(19) Referral--The process by which a midwife directs the client to a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under supervision and delegation of a physician.

(20) Retired midwife--A midwife licensed in Texas who is over the age of 55 and not currently employed in a health care field.

(21) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board in Chapter 193 (relating to Standing Delegation Orders) and §115.111 of this title (relating to Coordinating Care with Other Health Care Providers).

(22) Transfer--The process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under the supervision and delegation of a physician.

(23) Voluntary charity care--Midwifery care provided without compensation and with no expectation of compensation.

§115.70. Standards of Conduct.

The following are grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The commission or executive director may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the department;

(C) conviction of a felony or a misdemeanor involving moral turpitude;

(D) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(E) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(F) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(G) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(H) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(I) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

(J) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(K) failure to practice midwifery in a manner consistent with the public health and safety;

(L) failure to submit midwifery records in connection with the investigation of a complaint;

(M) a lack of personal or professional character in the practice of midwifery;

(N) failure to use generally accepted standards of midwifery care;

(O) failure to exercise ordinary diligence in the provision of midwifery care;

(P) failure to act competently in the provision of midwifery care; or

(Q) a material misrepresentation knowingly made to the department on any matter or to a client during the provision of midwifery care.

(2) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(3) The commission or executive director may revoke course approval if:

(A) the course no longer meets one or more of the standards established by this subsection;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the qualifications required by this subsection;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor falsified course registration, attendance, completion and/or other records; or

(E) continued approval of the course is not in the public interest.

§115.100. Standards for the Practice of Midwifery in Texas.

(a) Using reasonable skill and knowledge, the midwife shall:

(1) provide clients with a description of the scope of midwifery services and information regarding the client's rights and responsibilities in accordance with the Act;

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care and document that assessment in the midwifery record;

(3) provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery; and

(4) practice in accordance with the knowledge, clinical skills, and judgments described in the most recently adopted version of the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, within the bounds of the midwifery scope of practice as defined by the Act and Rules;

(b) The midwife shall provide care in a safe and clean environment. The midwife shall:

(1) carry and use when needed, resuscitation equipment; and

(2) use universal precautions for infection control.

(c) The midwife shall document midwifery care in legible, complete health records. The midwife shall:

(1) maintain records that completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultations, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

(4) maintain the confidentiality of midwifery records; and

(5) maintain records:

(A) for the mother, for a minimum of five years; and

(B) for the infant, until the age of majority.

(d) The midwife shall engage in a periodic process of evaluation and quality assurance. The midwife shall:

(1) collect client care data systematically and be involved in analysis of that data for the evaluation of the process and outcome of care;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

§115.111. Coordinating Care with Other Health Care Providers.

(a) A midwife shall consult with, refer to, collaborate with, or transfer to an appropriate healthcare provider or facility in accordance with the Act and this chapter.

(b) If a client who is at a low risk of developing complications elects not to accept a referral or a physician or associate's advice, the midwife shall:

(1) continue to care for the client after discussing and documenting the risks in the midwifery record, which shall include informing the client that her condition may worsen and require transfer;

(2) seek a consultation;

(3) manage the client in collaboration with an appropriate health care professional; or

(4) terminate care.

(c) If a midwife administers any prescription medication to a client or her newborn other than oxygen and eye prophylaxis, the midwife must do so in accordance with standing delegation orders from and under the supervision of a physician. The midwife shall ensure that the orders are current (renewed annually) and comply with state law and the rules of the Texas Medical Board.

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) the client has no need of further care;

(B) the client terminates the relationship; or

(C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 14 days written notice, during which the midwife shall continue to provide midwifery care;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care and the date that care will be terminated;

(C) providing a list of alternate health care providers; and

(D) documenting the termination of care in midwifery records.

(3) If a client elects not to accept a non-emergency transfer, the midwife shall:

(A) terminate the midwife-client relationship; or

(B) manage the client in collaboration with a physician or another licensed health care professional who has current obstetric or pediatric knowledge and who is working under the supervision and delegation of a physician.

§115.113. Transfer of Care in an Emergency Situation.

(a) In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) transporting the client by private vehicle; or

(2) calling 911 and reporting the need for immediate transfer.

(b) It is an emergency if, during labor, delivery, or six hours immediately following placental delivery, the midwife determines that transfer is necessary and the client refuses transfer. The midwife shall call 911 and provide further care as indicated by the situation. The midwife shall not provide any further care after the arrival of emergency medical service (EMS) personnel but may do so if requested by EMS personnel.

§115.114. Prenatal Care.

(a) Using reasonable skill and knowledge, the midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing, including antenatal testing if necessary; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) Hepatitis;

(3) non-insulin dependent diabetes;

(4) thyroid disease;

(5) current drug or alcohol abuse;

(6) asthma;

(7) abnormal pap smear (consistent with malignancy or pre-malignancy) during the current pregnancy;

(8) seizure disorder;

(9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8));

(10) twin gestation;

(11) history of prior antepartum or neonatal death;

(12) history of prior infant with a genetic disorder;

(13) abnormal vaginal bleeding;

(14) maternal age less than 15 at estimated date of delivery;

(15) history of cancer (except for ovarian, breast, uterine, or cervical cancer which will require transfer in accordance with subsection (c)(16));

(16) psychiatric illness; or

(17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance and document that recommendation in the midwifery record:

(1) placenta previa in the third trimester;

(2) Human Immunodeficiency Virus (HIV) positive or Acquired Immunodeficiency Syndrome (AIDS);

(3) cardio vascular disease, including hypertension, with the exception of varicosities;

(4) severe psychiatric illness;

(5) history of cervical incompetence with surgical therapy;

(6) pre-term labor (less than 37 weeks);

(7) Rh or other blood group isoimmunization;

(8) previous uterine surgery involving incision into the uterine myometrium, other than a low transverse cesarean section;

(9) preeclampsia/eclampsia;

(10) documented oligo-hydramnios or poly-hydramnios;

(11) any known fetal malformation requiring immediate post-natal hospital care;

(12) Preterm Premature Rupture of Membranes (PPROM);

(13) intrauterine growth restriction;

(14) insulin dependent diabetes;

(15) triplet or higher order multiple gestation;

(16) active cancer or history of ovarian, breast, uterine, or cervical cancer;

(17) undiagnosed vaginal bleeding lasting longer than two weeks; or

(18) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If a client has reached 42.0 weeks gestation and is not yet in labor, the midwife shall immediately either:

(1) collaborate with a physician and obtain appropriate antenatal testing, in order to continue midwifery care; or

(2) initiate transfer and document that action in the midwifery record.

§115.115. Labor and Delivery.

(a) Using reasonable skill and knowledge, the midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status as indicated.

(c) The midwife shall assist only in normal, spontaneous vaginal deliveries as allowed by the Act or this chapter.

(d) The midwife shall not engage in the following:

(1) application of fundal pressure on abdomen or uterus during first or second stage of labor;

(2) administration of oxytocin, ergot, or prostaglandins prior to or during first or second stage of labor; or

(3) any other prohibited practice as delineated by the Act, §203.401 (relating to Prohibited Practices).

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer in accordance with §115.113 and document that action in the midwifery record:

(1) prolapsed cord;

(2) chorio-amnionitis;

(3) uncontrolled hemorrhage;

(4) gestational hypertension/preeclampsia/eclampsia;

(5) severe abdominal pain inconsistent with normal labor;

(6) a non-reassuring fetal heart rate pattern;

(7) seizure;

(8) thick meconium unless the birth is imminent;

(9) visible genital lesions suspicious of herpes virus infection;

(10) evidence of maternal shock;

(11) preterm labor (less than 37 weeks);

(12) presentation(s) not compatible with spontaneous vaginal delivery;

(13) laceration(s) requiring repair beyond the scope of practice of the midwife;

(14) failure to progress in labor;

(15) retained placenta; or

(16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

§115.117. Newborn Care During the First Six Weeks After Birth.

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

(1) include referral or transfer to a health care professional who has current pediatric knowledge;

(2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and

(3) be documented in the midwifery record.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;

(2) provide appropriate education and counseling to the mother; and

(3) observe the newborn for a minimum of two hours after he or she is stable with no signs of distress.

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) birth injury;

(2) gestational age assessment less than 36 weeks;

(3) small for gestational age;

(4) larger than 97th percentile for gestational age; or

(5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) non-transient respiratory distress;

(2) non-transient pallor or central cyanosis;

(3) jaundice;

(4) apgar at 5 minutes less than or equal to 6;

(5) prolonged apnea;

(6) hemorrhage;

(7) signs of infection;

(8) seizure;

(9) major congenital anomaly not diagnosed prenatally;

(10) unstable vital signs;

(11) prolonged:

(A) lethargy;

(B) flaccidity; or

(C) irritability;

(12) inability to suck;

(13) persistent jitteriness;

(14) hyperthermia;

(15) hypothermia; or

(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) abnormal laboratory test results;

(2) minor congenital anomaly;

(3) failure to thrive; or

(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional and document that action in the midwifery record:

(1) respiratory distress;

(2) pallor or central cyanosis;

(3) pathological jaundice;

(4) hemorrhage;

(5) seizure;

(6) inability to urinate or pass meconium within 24 hours of birth;

(7) unstable vital signs;

(8) lethargy;

(9) flaccidity;

(10) irritability;

(11) inability to feed;

(12) persistent jitteriness; or

(13) any other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

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 March 28, 2019.

TRD-201900952
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 1, 2019
Proposal publication date: September 28, 2018
For further information, please call: (512) 463-3671

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16 TAC §115.90, §115.111

The repeals are adopted under the Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are 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 March 28, 2019.

TRD-201900953
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 1, 2019
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 194. MEDICAL RADIOLOGIC TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §§194.6, 194.10, 194.12, 194.13, 194.23

The Texas Medical Board (Board) adopts amendments to Chapter 194, relating to Medical Radiologic Technology, §194.6, Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry; §194.10, Retired Certificate or NCT General Registration Permit; §194.12, Standards for the Approval of Certificate Program Curricula

and Instructors; §194.13, Mandatory Training Programs for Non-Certified Technicians; and §194.23, Criminal Backgrounds. The amendments in §194.6 and §194.10 are being adopted without changes to the proposed text as published in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7850). The adopted amendments will not be republished. The Board made non-substantive typographical corrections in §§194.12, 194.13 and 194.23. These rules will be republished.

The amendments to §194.6, relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry, make several changes to temporary certification requirements, language related to examinations required for registration as an NCT or general or limited certification, and otherwise correct typographical errors and improve the clarity of the rule.

Amendments repeal language requiring temporary limited certification in order for an applicant to attempt passage of a limited examination. Amendments add language allowing such applicants to qualify for exam attempts prior to program completion through a simplified application process for obtaining approval. Other related amendments eliminate language providing for temporary limited certification solely upon successful completion of a limited medical radiologic program. These amendments were proposed in order to expedite limited certificate applicants' ability to take the appropriate limited examination, thereby increasing such applicants' ability to pass and obtain full limited certification more quickly. Further, the amendments will result in eliminating an individual's ability to perform limited medical radiologic procedures prior to successful examination passage, increasing public safety. Temporary limited and general certificates and temporary registration as an NCT would remain as an option for those applicants who meet certain requirements.

Amendments add language clarifying that all applicants for certification or registration will be required to pass the Texas jurisprudence examination. Other amendments repeal language requiring that an applicant pass the jurisprudence examination within three attempts. The changes align the rules with recent rule amendments repealing jurisprudence exam attempt limits for individuals applying for medical licensure, made pursuant to Senate Bill 674 (85th Legislature, Regular Session). It is the Board's interpretation that SB 674 is intended to eliminate passage attempt limitations for the jurisprudence examination for all applicants applying for licensure under the Texas Medical Board and Advisory Boards' jurisdiction.

The amendments to §194.10, relating to Retired Certificate or NCT General Registration Permit, repeal language requiring retired certificate holders or NCTs who wish to return to active status to provide professional evaluations from each employment held before his or her certificate or registration permit was placed on retired status.

The amendments to §194.12, relating to Standards for the Approval of Certificate Program Curricula and Instructors, require all limited certificate programs to obtain accreditation by board recognized national or regional accrediting entities in order to obtain board approval. Such amendments will ensure that staff resources are efficiently used, while maintaining the rigorousness of the approval process. Further, all currently approved limited training programs have such accreditation status, meaning that the effect of adopting such amendments will have minimal cost impact on such programs, if any.

The amendments to §194.13, relating to Mandatory Training Programs for Non-Certified Technicians, amend the rules related to requirements for mandatory training programs for non-certified technicians for the purpose of providing clarity on required processes for approval and renewal procedures related to programs and instructors.

The amendments to §194.23, relating to Criminal Backgrounds, amend the rules so that language is added for clarity and consistency.

Comments were received from the Texas Medical Association and the Texas Orthopaedic Association on §194.6.

Comment No. 1 - Texas Medical Association

The Texas Medical Association (TMA) opposed language amending §194.6 so that non-certified technicians (NCTs) are required to pass a jurisprudence examination, questioning the Board of Medical Radiologic Technology's authority to require such an examination and stating that the examination represents an unnecessary cost and potential bar to NCT registration.

Board Response: The Board disagrees that that the examination represents an unnecessary or prohibitive cost related to the NCT registration process and disagrees that the test is not authorized under the Medical Radiologic Technology Act. The authority is provided under the MRT Act's provisions related to ensuring public health and safety through the regulation of the practice of radiologic technology by NCTs. The exam is being tailored so that it will represent a low-cost method for ensuring that NCTs have retained knowledge about highly important practice safety issues (including the identification of dangerous or hazardous procedures that may not be performed by NCTs) and requirements related to maintenance of registration, such as renewal and address update requirements, therefore avoiding interruption in registration and ensuring the receipt of important correspondence from the Board.

Comment No. 2 - Texas Orthopaedic Association

The Texas Orthopaedic Association (TOA) commented on §194.6 and the amended language requiring NCTs to pass a jurisprudence examination, and §194.13, related to NCT training program requirements. TOA encouraged the Board to include stakeholders in the process of adopting NCT training program rules, and expressed concerns about requiring NCTs to pass an examination, asking that if the Board proceeds to adopt such amendments, that the Board work with stakeholders on ensuring that the examination ensures a higher level of care and not an unnecessary regulatory burden.

Board Response: The Board included stakeholders in the rulemaking process, presenting the amendments at a meeting on September 28, 2018. Board staff is developing a tailored and low cost examination for NCTs, focused on ensuring that NCTs retain important information related to the most important practice safety issues (including the identification of dangerous or hazardous procedures that may not be performed by NCTs), and requirements related to maintenance of registration, such as renewal and address update requirements, therefore avoiding interruption in registration and ensuring the receipt of important correspondence from the Board. The examination is designed so that it will ensure public safety and assist NCTs to maintain compliance with the timely maintenance of registration requirements.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §601.052, which provides author-

ity for the Board to recommend rules to establish licensing and other fees and recommend rules necessary to administer and enforce this chapter. The amendments are further authorized under S.B. 674 (85th Legislature, R.S.).

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

§194.12. Standards for the Approval of Certificate Program Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by accrediting organizations recognized by:

(1) the Council for Higher Education Accreditation, including but not limited to: the JRCNMT; or

(2) the United States Secretary of Education, including, but not limited to JRCERT, ABHES, or SACS.

(b) Limited Certificate Programs. All programs and curricula training individuals to perform limited radiologic procedures must:

(1) be accredited by JRCERT, ABHES, or SACS to offer a limited curriculum in radiologic technology; or

(2) be accredited by JRCCVT to offer a curriculum in invasive cardiovascular technology.

(c) Application procedures for certificate programs.

(1) Application shall be made by the program director on official forms available from the board.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the application fee, in accordance with Chapter 175 of this title (relating to Fees and Penalties);

(B) a copy of the current accreditation issued to the program by accepted accrediting organizations under subsections (a) - (b) of this section; and

(C) an agreement to allow the board to conduct an administrative audit of the program to determine compliance with this section.

(d) Procedure for Approval or Denial.

(1) Review by the Executive Director.

(A) The executive director or designee shall review applications for approval and may determine whether an applying program is eligible for approval, or refer an application to the Education Committee of the board for review.

(B) If the executive director or designee determines that the applying program clearly meets all approval requirements, the executive director or designee may approve the applicant, to be effective on the date issued without formal board approval.

(C) If the executive director determines that the applying program does not clearly meet all approval requirements prescribed by the Act and this chapter, approval may be issued only upon action by the board following a recommendation by the Education Committee. The Education Committee may recommend to grant or deny the approval request.

(2) Reconsideration of Denials.

(A) Determinations to deny approval of a program may be reconsidered by the Education Committee or the board based on additional information concerning the applying program and upon a showing of good cause for reconsideration.

(B) A decision to reconsider a denial determination shall be a discretionary decision by the Education Committee, based on consideration of the additional information. Requests for reconsideration shall be made in writing by the applying program director.

(e) Grounds for Denial or Withdrawal of Approval.

(1) Failure of the applying or approved training program to comply with the provisions of this chapter or the Act may be grounds for denial or withdrawal of the approval of the training program.

(2) In the event that the board receives complaints against an approved program, such information shall be referred to the board's investigation department.

(3) Any material misrepresentation of fact by an approved or applying program in any information required to be submitted to the board is grounds for denial or withdrawal of approval.

(4) The board may deny or withdraw its approval of a program after giving the program written notice setting forth its reasons for denial or withdrawal and after giving the program a reasonable opportunity to be heard by the Education Committee of the board.

(f) Renewal.

(1) The training program director shall be responsible for applying for renewal of the training program's approval. The program director must apply for renewal every three years by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(2) Failure to submit the renewal form and renewal fee will result in the expiration of the training program's approval. In the case that the approval is expired, to obtain a new approval, the training program must reapply to meet all requirements for approval under this section.

(3) A training program which fails to apply for renewal or otherwise holds an expired approval shall cease representing the program as an approved training program. The program director shall notify currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(g) Required Reports to the Board. The program director shall report the following to the board within 30 days after the event:

(1) Any change of address for the physical location of the program; or

(2) any change in accreditation status by an acceptable accrediting organization under subsections (a) - (b) of this section.

§194.13. Mandatory Training Programs for Non-Certified Technicians.

(a) General. This section sets out the minimum standards for board approval of mandatory non-certified technician training programs, as required by the Act, §601.201, which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Non-certified technicians are distinct from individuals performing a radiologic procedure under hardship exemption granted under §194.16 of this chapter (relating to Hardship Exemptions).

(b) Training Requirements. In order to successfully complete a program, each student must complete the following minimum training:

(1) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others--22 classroom hours;

(B) image production and evaluation--24 classroom hours; and

(C) radiographic equipment maintenance and operation--16 classroom hours which includes at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(2) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours; and/or

(G) podiatric--5 classroom hours.

(3) Live, In-Person Instructor Direction Required. All hours of the training program completed for the purposes of this section must be live, in-person, and directed by an approved instructor. No credit will be given for training completed by self-directed study, remote learning, or correspondence.

(c) Application Procedures and Eligibility Requirements for Training Programs. An application shall be submitted to the board at least 30 days prior to the starting date of the training program.

(1) Application shall be made by the program director on official forms available from the board.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the application fee, in accordance with Chapter 175 of this title (relating to Fees and Penalties); and

(B) an agreement to allow the board to conduct an administrative audit of the program to determine compliance with this section.

(d) Training Program Application Materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Career Schools and Colleges Section indicating that the proposed training program has complied with or has been granted exempt status under Texas Education Code, Chapter 132. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation is not necessary; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (b) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §194.17 of this chapter (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and grades for not less than five years. Such records shall be made available upon request by the board or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the board within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the board to determine compliance with this section.

(e) Application Procedures and Eligibility Requirements for Instructors.

(1) Except as otherwise provided, all persons who will provide instruction and training in an approved program under this section must obtain approval by the board prior to initiating instruction or training.

(2) To obtain board approval, all individual(s) must at a minimum:

(A) submit an application on a form prescribed by the board;

(B) pay the required application fee, as set forth under Chapter 175 of this title;

(C) successfully complete an education program in accordance with §194.12 of this chapter and not less than six months classroom or clinical experience teaching the subjects assigned; and

(D) have at least one or more of the following qualifications:

(i) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(ii) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; and/or

(iii) be a practitioner who is in good standing with all appropriate regulatory agencies, and is not the subject of any disciplinary order; and

(E) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(f) Procedure for Approval or Denial.

(1) Review by the Executive Director.

(A) The executive director or designee shall review applications for approval and may determine whether an applying program or instructor is eligible for approval, or refer an application to the Education Committee of the board for review.

(B) If the executive director or designee determines that the applying program or instructor clearly meets all approval requirements, the executive director or designee may approve the applicant, to be effective on the date issued without formal board approval.

(C) If the executive director determines that the applying program or instructor does not clearly meet all approval requirements prescribed by the Act and this chapter, approval may be issued only upon action by the board following a recommendation by the Education Committee. The Education Committee may recommend to grant or deny the approval request.

(2) Reconsideration of Denials.

(A) Determinations to deny approval of a program or instructor may be reconsidered by the Education Committee or the board based on additional information concerning the applying program or instructor and upon a showing of good cause for reconsideration.

(B) A decision to reconsider a denial determination shall be a discretionary decision by the Education Committee, based on consideration of the additional information. Requests for reconsideration shall be made in writing by the applying program director or instructor.

(g) Renewal.

(1) Training Program.

(A) The training program director shall be responsible for renewing the approval of the training program.

(B) The program director must apply for renewal of program approval every three years by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(C) Failure to submit the renewal form and renewal fee will result in the expiration of the training program's approval. In the case that the approval is expired, to obtain a new approval, the training program must reapply and meet all requirements for approval under this section.

(D) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(2) Instructor.

(A) The instructor must apply for renewal of approval every three years by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(B) Failure to submit the renewal form and renewal fee will result in the expiration of the instructor's approval. In the case that the approval is expired, to obtain a new approval, the instructor must reapply to meet all requirements for approval under this section.

(C) The instructor who does not renew the approval shall cease representing that he or she is approved by the board to provide instruction in a non-certified technician training program in Texas.

(h) Grounds for Denial or Withdrawal of Approval.

(1) Failure of the applying or approved instructor or training program to comply with the provisions of this chapter or the Act may be grounds for denial or withdrawal of the approval of the instructor or the training program.

(2) An approved instructor who holds a limited certificate may not teach, train, or provide clinical instruction in a portion of a training program that is different from the limited scope of certification that is listed on the permit. Providing instruction that exceeds the instructor's limited scope of practice is grounds for denial or withdrawal of approval.

(3) In the event that the board receives complaints against an approved instructor or program, such information shall be referred to the board's investigation department.

(4) Any material misrepresentation of fact by a program or instructor in any information required to be submitted to the board is grounds for denial or withdrawal of approval.

(5) The board may deny or withdraw its approval of a program or instructor after giving the program or instructor written notice setting forth its reasons for denial or withdrawal and after giving the program or instructor a reasonable opportunity to be heard by the Education Committee of the board.

(i) Change of Program Address. The program director shall report within 30 days after the event any change of address for the physical location of the program.

§194.23. Criminal Backgrounds.

This section sets out the guidelines and criteria related to the board's authority to deny certification, registration, or other approval, or to take disciplinary action based upon a person's criminal background.

(1) The board may suspend or revoke any certificate, registration, or other approval; disqualify a person from receiving any certificate, registration, or other approval; or deny to a person the opportunity to be examined for a certificate if the person is convicted of or subject to a deferred adjudication, enters a plea of nolo contendere or guilty to a felony or misdemeanor, and if the crime directly relates to the duties and responsibilities of a certificate, registration, or permit holder.

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of a holder of a certificate, registration, or other approval, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification, registration, or other approval; and

(C) the extent to which a certification, registration, or other approval might offer an opportunity to engage in further criminal

activity of the same type as that which the person previously has been involved.

(3) The following felonies and misdemeanors apply to any certificate, registration, or other approval because these criminal offenses indicate an inability or a tendency to be unable to perform as a holder of a certificate, registration, or other approval:

(A) the misdemeanor of knowingly or intentionally acting as a certificate holder without a certificate under the Act;

(B) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(C) a misdemeanor or felony offense involving:

(i) forgery;

(ii) tampering with a governmental record;

(iii) delivery, possession, manufacturing, or use of controlled substances and dangerous drugs;

(D) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this section.

(4) The misdemeanors and felonies listed in paragraph (3) of this section are not exclusive. The Board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

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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PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.33

The Texas Board of Nursing (Board) adopts amendments to §213.33(b) and (e), relating to *Factors Considered for Imposition of Penalties/Sanctions.* The amendments are adopted with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 665). A non-substantive change was made in (c) to conform to *Texas Register* formatting guidelines; therefore, the rule will be republished.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.461 and §301.151 and are necessary to conform to statutory mandates and eliminate redundant language from the rule.

Background

The Texas Legislature adopted House Bill (HB) 2950 during the 85th Regular Legislative Session. HB 2950 amended the Occupations Code §301.461 (Nursing Practice Act) to prohibit the Board from imposing upon an applicant or licensee the costs of an administrative hearing at the State Office of Administrative Hearings (SOAH). The adopted amendments are necessary to conform to this statutory requirement. The adopted amendments also eliminate redundant language from the section and clarify the use of the Board's Disciplinary Matrix.

How the Section Will Function

The adopted amendments only affect subsections (b) and (e) of the section. Subsection (b) contains the Board's Disciplinary Matrix. The adopted amendments eliminate redundant language from the preamble of the Disciplinary Matrix. The adopted amendments also clarify that the Board and SOAH must consider the requirements of the Occupations Code §301.4531 in matters involving multiple violations or individuals with prior discipline. In such cases, §301.4531 requires the Board to consider taking a more severe disciplinary action than would typically be taken for a single violation or if the individual was not previously the subject of disciplinary action. No other changes are made to the Board's Disciplinary Matrix.

The adopted amendments to §213.33(e)(12) eliminate the assessment of costs, as they relate to a contested case hearing at SOAH, from the rule. Potential appellate costs authorized by the Government Code §2001.177 are not affected by the adopted changes.

Summary of Comments Received

The Board did not receive any comments on the proposal.

Statutory Authority

The amendments are adopted under the authority of the Occupations Code §301.151 and §301.461.

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

Section 301.461 states that the Board may not assess a person who is found to have violated Chapter 301 the administrative costs of conducting a hearing to determine the violation.

§213.33. Factors Considered for Imposition of Penalties/Sanctions.

(a) The Board and the State Office of Administrative Hearings (SOAH) shall utilize the Disciplinary Matrix set forth in subsection (b) of this section in all disciplinary and eligibility matters.

(b) The Disciplinary Matrix is as follows:
Figure: 22 TAC §213.33(b)

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The mitigating and aggravating factors specified in the Matrix are in addition to the factors listed in this subsection. Further, the presence of mitigating factors in a particular case does not constitute a requirement of dismissal of a violation of the NPA and/or Board rules. If multiple violations of the NPA and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the Nursing Practice Act (NPA) and Board rules:

(1) evidence of actual or potential harm to patients, clients, or the public;

(2) evidence of a lack of truthfulness or trustworthiness;

(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present fitness to practice;

(6) whether the person has been subject to previous disciplinary action by the Board or any other health care licensing agency in Texas or another jurisdiction and, if so, the history of compliance with those actions;

(7) the length of time the person has practiced;

(8) the actual damages, physical, economic, or otherwise, resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances, including those specified in the Disciplinary Matrix;

(12) the extent to which system dynamics in the practice setting contributed to the problem;

(13) whether the person is being disciplined for multiple violations of the NPA or its derivative rules and orders;

(14) the seriousness of the violation;

(15) the threat to public safety;

(16) evidence of good professional character as set forth and required by §213.27 of this chapter (relating to Good Professional Character);

(17) participation in a continuing education course described in §216.3(f) of this title (relating to Requirements) completed not more than two years before the start of the Board's investigation, if the nurse is being investigated by the Board regarding the nurse's selection of clinical care for the treatment of tick-borne diseases; and

(18) any other matter that justice may require.

(d) Each specific act or instance of conduct may be treated as a separate violation.

(e) The Board may, upon the finding of a violation, enter an order imposing one or more of the following disciplinary actions, with or without probationary stipulations:

(1) Denial of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license);

(2) Approval of temporary permit or licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license), with one or more reasonable probationary stipulations as a condition of issuance, renewal, or reinstatement/reactivation. Additionally, the Board may determine, in accordance with §301.468 of the NPA, that an order denying a license application/petition, license renewal, license reinstatement/reactivation, or temporary permit be probated. Reasonable probationary stipulations may include, but are not limited to:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board as a condition for the issuance, renewal, or reinstatement/reactivation of the license or temporary permit or the return to direct patient care from a limited license;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(3) Issuance of a Warning. The issuance of a Warning shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of at least one year under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(4) Issuance of a Reprimand. The issuance of a Reprimand shall include reasonable probationary stipulations which may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of at least two years under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(5) Limitation or restriction of the person's license or permit, including limits on specific nursing activities and/or practice settings and/or periodic Board review;

(6) Suspension of the person's license or permit. The Board may determine that the order of suspension be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include, but are not limited to, one or more of the following:

(A) submit to care, supervision, counseling, or treatment by a health provider designated by the Board;

(B) submit to an evaluation as outlined in subsections (k) and (l) of this section and/or pursuant to the Occupations Code §301.4521;

(C) participate in a program of education or counseling prescribed by the Board;

(D) limit specific nursing activities and/or practice settings and/or require periodic Board review;

(E) practice for a specified period of not less than two years under the direction of a registered nurse or vocational nurse designated by the Board;

(F) abstain from unauthorized use of drugs and alcohol to be verified by random drug testing conducted through urinalysis; or

(G) perform public service which the Board considers appropriate;

(7) Remit payment of an administrative penalty or fine;

(8) Acceptance of a Voluntary Surrender of a nurse's license(s) or permit;

(9) Revocation of the person's license or permit;

(10) Require participation in remedial education course or courses prescribed by the Board which are designed to address those competency deficiencies identified by the Board;

(11) Assessment of a fine as set forth in §213.32 of this chapter (relating to Corrective Action Proceedings and Schedule of Administrative Fines);

(12) Assessment of costs as authorized by the Government Code §2001.177; and/or

(13) Require successful completion of a Board approved peer assistance program.

(f) Every order issued by the Board shall require the person subject to the order to participate in a program of education or counseling prescribed by the Board, which at a minimum, will include a review course in nursing jurisprudence and ethics.

(g) The following disciplinary and eligibility sanction policies, as applicable, shall be used by the Executive Director, Board and SOAH when determining the appropriate penalty/sanction in disciplinary and eligibility matters:

(1) Sanctions for Behavior Involving Fraud, Theft, and Deception, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(2) Sanctions for Behavior Involving Lying and Falsification, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html;

(3) Sanctions for Sexual Misconduct approved by the Board and published on February 22, 2008, in the *Texas Register* (33 TexReg 1649) and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html; and

(4) Sanctions for Substance Use Disorders and Other Alcohol and Drug Related Conduct, approved by the Board and published on August 28, 2015, in the *Texas Register* and available on the Board's website at http://www.bon.state.tx.us/disciplinaryaction/dsp.html.

(h) To the extent that a conflict exists between the Disciplinary Matrix and a disciplinary and eligibility sanction policy described in subsection (g) of this section, the Disciplinary Matrix controls.

(i) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(j) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and the Board's rules.

(k) If the Board has probable cause to believe that a person is unable to practice nursing with reasonable skill and safety because of physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol, the Board may require an evaluation that meets the following standards:

(1) The evaluation must be conducted by a Board-approved addictionologist, addictionist, medical doctor, neurologist, doctor of osteopathy, psychologist, neuropsychologist, advanced practice registered nurse, or psychiatrist, with credentials appropriate for the specific evaluation, as determined by the Board. In all cases, the evaluator must possess credentials, expertise, and experience appropriate for conducting the evaluation, as determined by the Board. The evaluator must be familiar with the duties appropriate to the nursing profession.

(2) The evaluation must be designed to determine whether the suspected impairment prevents the person from practicing nursing with reasonable skill and safety to patients. The evaluation must be conducted pursuant to professionally recognized standards and methods. The evaluation must include the utilization of objective tests and instruments with valid and reliable validity scales designed to test the person's fitness to practice. The evaluation may include testing of the person's psychological or neuropsychological stability only if the person is suspected of mental impairment, chemical dependency, or drug

or alcohol abuse. If applicable, the evaluation must include information regarding the person's prognosis and medication regime.

(3) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by the Board staff and a release that permits the evaluator to release the evaluation to the Board. The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(l) When determining evidence of present fitness to practice because of known or reported unprofessional conduct, lack of good professional character, or prior criminal history:

(1) The Board may request an evaluation conducted by a Board-approved forensic psychologist, forensic psychiatrist, or advanced practice registered nurse who:

(A) evaluates the behavior in question or the prior criminal history of the person;

(B) seeks to predict:

(i) the likelihood that the person subject to evaluation will engage in the behavior in question or criminal activity again, which may result in the person committing a second or subsequent reportable violation or receiving a second or subsequent reportable adjudication or conviction; and

(ii) the continuing danger, if any, that the person poses to the community;

(C) is familiar with the duties appropriate to the nursing profession;

(D) conducts the evaluation pursuant to professionally recognized standards and methods; and

(E) utilizes objective tests and instruments, as determined and requested by the Board, that are designed to test the psychological or neuropsychological stability, fitness to practice, professional character, and/or veracity of the person subject to evaluation.

(2) The person subject to evaluation shall sign a release allowing the evaluator to review the file compiled by Board staff and a release that permits the evaluator to release the evaluation to the Board.

(3) The person subject to evaluation should be provided a copy of the evaluation upon completion by the evaluator; if not, the Board will provide the person a copy.

(m) Notwithstanding any other provision herein, a person's failure to appear in person or by attorney on the day and at the time set for hearing in a contested case shall entitle the Board to revoke the person's license.

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 April 1, 2019.

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Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: April 21, 2019
Proposal publication date: February 15, 2019
For further information, please call: (512) 305-6822

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 33. CONTINUING CARE PROVIDERS

The Texas Department of Insurance has renamed Chapter 33 and adopts amendments to 28 TAC §§33.2, 33.3, 33.5, 33.6, and 33.8 - 33.10, and new 28 TAC §§33.101 - 33.105 relating to Continuing Care Providers and Continuing Care in Residence. The department also adopts by reference the 19 forms listed in §33.8. The amendments and new sections are adopted with changes to the proposed text published in the January 18, 2019, issue of the *Texas Register* (44 TexReg 317). The department revised a typographical error in §33.2(9) and other non-substantive changes.

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement House Bill 2697, 84th Legislature, Regular Session (2015). HB 2697 added continuing care in residence to the scope of continuing care under Health and Safety Code Chapter 246.

Chapter Name Change.

The name of Chapter 33 is changed from "Continuing Care Retirement Facilities" to "Continuing Care Providers" to reflect that Chapter 33 applies not only to continuing care in facilities, but also to continuing care in residence.

Subchapter A. General Provisions.

Amendments to §33.2 add new definitions, revise existing definitions, and make changes to conform to the department's style guidelines. Existing definitions are renumbered as appropriate following addition of the new defined terms.

The definitions of "actuarial review" in §33.2(3), "continuing care" in §33.2(7), "entrance fee" in renumbered §33.2(13), "facility" in renumbered §33.2(14), "provider" in renumbered §33.2(20), and "resident" in renumbered §33.2(24), are amended to clarify the application of each term to continuing care in residence.

The definition for "continuing care in residence" is adopted in §33.2(9). The definition for "continuing care in residence" is consistent with Health and Safety Code §246.0025 and clarifies who is subject to the rule. The text of §33.2(9) as proposed is changed to correct a typographical error; the word "Continuing" is capitalized, for consistency with capitalization of the other definitions.

The definition for "financial statements" is adopted in §33.2(15). The definition for "financial statements" clarifies that financial statements for all providers must be completed in accordance with generally accepted accounting principles of the U.S. and establishes additional requirements for continuing care in residence providers. The additional requirements are listed in §33.2(15)(A) - (D). They include segmented income statement reporting, which report facility services and in-residence services separately based on an actuarial review; reporting balance sheet liabilities for facility services and in-residence services separately; disclosing in a supporting schedule entrance fee activity by resident; and disclosing the ratios described in §33.505(b)(2) - (7).

Amendments to §33.3 reflect that the chapter applies to providers rather than facilities, because Health and Safety Code Chapter 246 was expanded from continuing care provided in facilities to include continuing care in residence.

Amendments to §33.5 update an outdated statutory citation to Insurance Code Chapter 82.

Amendments to §33.6 clarify that a certificate of authority is required to provide care under a continuing care contract as defined in Health and Safety Code Chapter 246, regardless of where the continuing care services are provided.

Amendments to §33.8 add three forms adopted by reference and amend existing forms adopted by reference. The amendments to §33.8 also add references to the department's internal form numbering system ("FIN" numbers) for all CCRC forms for clarity, remove information stating that the forms can be obtained through the mail, because they can be obtained from the department's website, and ensure that form names in the rule match the actual names on the adopted forms.

Forms listed in §33.8 that use the department's letterhead will use the most current version of that letterhead, as it may change from time to time. Nonsubstantive information on the listed forms is indicated in brackets, including the department's physical address, mailing addresses, and electronic addresses; submission locations; submission formats and methods; and contact information. Nonsubstantive information is subject to change. The most current versions of the forms will be available on the department's website. The amended forms will encourage electronic submissions, which should result in greater efficiency and cost savings to persons submitting the forms to the department.

Changes to existing CCRC Form 6a (FIN389) amend the directions providers must follow to prepare and submit disclosure statements. Amendments to existing CCRC Form 9 (FIN392) allow the form to be used for entrance fee escrow release requests for both facility-based and residence-based continuing care contracts. It provides additional notice to escrow agents about releasing continuing care in residence entrance fee escrow funds only after the department's approval.

New CCRC Forms 1a (FIN604), 6b (FIN605), and 14a (FIN607) are also adopted by reference in §33.8. A licensed provider must use CCRC Form 1a (FIN604) to request authority to offer continuing care in residence. CCRC Form 6b (FIN605) lists the contents continuing care in residence providers must include in disclosure statements, which are filed with the department and given to prospective residents. CCRC Form 14a (FIN607) is the form a continuing care in residence provider must use to request that the department approve the release of continuing care in residence entrance fee escrow funds.

Amendments to CCRC Form 3 (FIN384) and CCRC Form 4 (FIN385) update the social security number requirement to note "Disclosure of Social Security Number is required under Texas Family Code §231.302." These two forms, and the other forms listed as adopted by reference in §33.8, will also have nonsubstantive updates for letterhead, submission addresses, and current department style guidelines.

Amendments to §33.9 describe how to submit inquiries, applications, and other filings to the department.

Amendments to §33.10 clarify that the Commissioner may investigate not only unauthorized continuing care facilities but also unauthorized continuing care in residence providers.

Subchapter B. Continuing Care in Residence.

Section 33.101 is added to define the scope of Subchapter B relating to continuing care in residence. The subchapter addresses applying for authority, disclosure statements, and entrance fee escrow accounts for providers offering continuing care in residence.

Section 33.102 is added to specify the information that must be provided and the process that must be followed to apply for authority to offer continuing care in residence.

Section 33.103 is added to explain when and how a continuing care in residence provider must compile and file disclosure statements related to continuing care in residence. Continuing care in residence providers must file a disclosure statement with the department annually or more frequently, when amended for accuracy.

Section 33.104 is added regarding entrance fee escrow account requirements. Section 33.104(a) references the current rules that the department will apply to the continuing care in residence entrance fee escrow accounts. Section 33.104(b) requires continuing care in residence entrance fees be held in escrow. It also states that providers must request release of the escrow funds using CCRC Form 14a (FIN607), and it provides that a request must be approved by the department before an escrow agent may release the funds. Section 33.104(c) establishes the information the department will consider when a provider requests the release of entrance fee escrow funds and the conditions that will prevent the department from approving the request. Section 33.104(d) states that the department will issue a determination on a provider's request to both the provider and the escrow agent.

Section 33.105 is added to describe requirements for continuing care in residence form contracts. Section 33.105(a) requires providers to use a standard continuing care in residence contract. Section 33.105(b) lists requirements for the standard form, including that it must contain an amortization schedule for release of entrance fee escrow funds, a description of the provider's statutory duties and obligations, and a specific disclosure regarding cancellation rights. Health and Safety Code §246.056 requires a cancellation rights disclosure; subsection (d) of that section provides language for the disclosure and requires that at least a substantially similar version of that language be included in the contract. Consistent with that, the department's required disclosure includes language clarifying the cancellation rights associated with a continuing care in residence contract.

In addition, the amended sections include non-substantive editorial and formatting changes to conform the sections to the department's current style and to improve the rule's clarity.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§33.2, 33.3, 33.5, 33.6, 33.8 - 33.10

STATUTORY AUTHORITY. Amendments to §§33.2, 33.3, 33.5, 33.6, and 33.8 - 33.10 are adopted under Health and Safety Code §246.003(b) and §246.0737, and Insurance Code §36.001.

Health and Safety Code §246.003(b) authorizes the department to adopt rules to implement Health and Safety Code Chapter 246.

Health and Safety Code §246.0737 charges the department with adopting rules that establish a different set of criteria for release of continuing care in residence entrance fees from escrow.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§33.2. Definitions.

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

(1) Act--The Texas Continuing Care Facility Disclosure and Rehabilitation Act, Health and Safety Code, Chapter 246.

(2) Actuarial funded status--The ratio of actuarial assets plus net accounting assets to actuarial liabilities plus actuarial refund liabilities.

(3) Actuarial review--An analysis performed by a qualified actuary in accordance with actuarial standards of practice of the current actuarial balance of the financial condition of a facility and of the provider's continuing care in residence operations, if any. An actuarial review includes, but is not limited to, the following:

(A) an actuarial report;

(B) a statement of actuarial opinion;

(C) an actuarial balance sheet;

(D) a cash flow projection; and

(E) disclosure of the actuarial methodology, formulas, and assumptions, including justification for continuing care in residence entrance fee escrow account amortization schedules.

(4) Affiliate--A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

(5) Audited financial statements--Statements prepared by an independent Certified Public Accountant (CPA), which includes an audit opinion from the CPA concerning the financial statements.

(6) Commissioner--The Commissioner of Insurance of the Texas Department of Insurance.

(7) Continuing care--The furnishing of a living unit, together with personal care services, nursing services, medical services, or other health-related services, to an individual who is not related by consanguinity or affinity to the provider of the care under a continuing care contract, regardless of whether the services and the living unit are provided at the same location. The term "continuing care" includes continuing care in residence.

(8) Continuing care contract--An agreement that requires the payment of an entrance fee by or on behalf of an individual in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the individual; or

(B) more than one year.

(9) Continuing care in residence--Continuing care services provided to an individual in the individual's residence or otherwise enabling the individual to remain in the individual's residence, as authorized under Health and Safety Code §246.0025.

(10) Control--The possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. This definition also includes the terms "controlling," "controlled by," and "under common control with." Control is presumed to exist if any person, directly or indirectly, owns, controls, or holds with the power to vote, or holds irrevocable proxies representing, 10 percent or more of the voting securities or authority of any other person. This presumption may be rebutted to show that control does not in fact exist.

(11) Debt service coverage ratio--Total excess (deficit) of revenues and gains in excess of expenses and losses plus interest expense plus depreciation expense plus amortization expense minus amortization of deferred revenues from entry fees plus net proceeds from entry fees, divided by annual debt service (annual principal and interest payment or maximum annual debt service).

(12) Department--The Texas Department of Insurance.

(13) Entrance fee--An initial or deferred transfer of money, or other property valued at an amount in excess of three months' payments for rent or services, made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual entitled to receive continuing care under a continuing care contract. The term does not include a deposit made under a reservation agreement.

(14) Facility--A place in which a person undertakes to provide continuing care. A place is an establishment, complex, campus, or group of living units at which a provider engages in the business of providing continuing care. If two or more establishments, complexes, campuses, or groups of living units are located on one premises, they must be treated as one facility if their operations are controlled by the same provider. If two or more establishments, complexes, campuses, or group of living units are located on one premises but controlled by separate providers, they must be treated as separate facilities. A facility that is constructed on an as-needed basis and for which a certificate of authority is obtained from the department prior to facility construction will be considered a phase-in facility. The term does not include an individual's residence if the residence is not a living unit provided by a provider.

(15) Financial Statements--Financial statements completed in accordance with generally accepted accounting principles. Financial statements for providers with continuing care in residence operations must:

(A) include segmented financial statement reporting, separating the facility services and in residence services, including an actuarial review;

(B) include a balance sheet that reports liabilities for obligations for facility-based services and obligations for in residence services separately;

(C) disclose entrance fee activity for the fiscal year including the amount held in escrow at the beginning of the year, any amounts collected during the year, any amounts released during the year, and the total amount held in escrow at the end of the year; and

(D) disclose the ratios addressed in §33.505(b)(2) - (7) of this title.

(16) Fund balance--Assets as shown on the balance sheet minus liabilities shown on the balance sheet.

(17) Living unit--A room, apartment, cottage, or other area within a facility that is set aside for the exclusive use or control of one or more specified individuals.

(18) Long-term nursing care--Nursing care provided for a period longer than 365 consecutive days.

(19) Person--An individual, corporation, association, or partnership, including a fraternal or benevolent order or society.

(20) Provider--A person who undertakes to provide continuing care under a continuing care contract, whether in a facility or in an individual's residence.

(21) Qualified actuary--A member of the American Academy of Actuaries or the Society of Actuaries or a person recognized by the Commissioner as having comparable training or experience.

(22) Reservation agreement--An agreement that requires the payment of a deposit to reserve a living unit for a prospective resident. A deposit made under a reservation agreement is not considered an entrance fee.

(23) Reservation agreement deposit--A deposit paid under a reservation agreement.

(24) Resident--An individual entitled to receive continuing care from a provider under a continuing care contract.

§33.3. Scope.

This chapter applies to a provider if the provider:

(1) provides continuing care under a continuing care contract agreement;

(2) enters into, offers, or solicits a continuing care contract; or

(3) enters into, offers, or solicits a reservation agreement on or after September 1, 1993.

§33.5. Violation of Rules.

A violation of any provision of this chapter or of any order of the Commissioner or the department entered under this chapter may subject the violator to penalties, including those stated in Insurance Code Chapter 82.

§33.6. Fees for Filing Application for Certificate of Authority.

An applicant filing for a certificate of authority under Health and Safety Code §246.022 must pay the department a nonrefundable filing fee of $10,000. No fee is required for a §33.102 application for authority for continuing care in residence.

§33.8. Forms.

The forms listed in this section are available on the department's website. The department adopts and incorporates by reference the forms listed in paragraphs (1) - (19) of this subsection, and their use is required, where applicable, for compliance with the provisions of this chapter. Forms that are on the department's letterhead will use the most current version of that letterhead, as it may change from time to time. Bracketed information in the forms is subject to change, including the department's physical, mailing, and electronic addresses; submission locations; submission formats and methods; and contact information. Persons submitting the forms should verify that they are using the most recent online version before submitting.

(1) CCRC Form 1 (FIN382)--Application for certificate of authority to do business in the State of Texas under Health and Safety Code Section 246.022;

(2) CCRC Form 1a (FIN604)--Application for authority to offer continuing care in residence in Texas under Health and Safety Code Section 246.0025(b);

(3) CCRC Form 2 (FIN383)--Application for Commissioner approval to release excess loan reserve escrow fund amounts under Health and Safety Code Section 278.078;

(4) CCRC Form 3 (FIN384)--Officers and directors page;

(5) CCRC Form 4 (FIN385)--Biographical data form;

(6) CCRC Form 4a (FIN386)--Biographical data form for not-for-profit CCRC board members;

(7) CCRC Form 5 (FIN387)--Delivery of disclosure statement;

(8) CCRC Form 6 (FIN388)--Format for disclosure statement for continuing care facility;

(9) CCRC Form 6a (FIN389)--Instructions for preparing a continuing care retirement community disclosure statement for filing with the Texas Department of Insurance;

(10) CCRC Form 6b (FIN605)--Format for disclosure statement for continuing care in residence;

(11) CCRC Form 7 (FIN390)--Change of control statement for CCRC;

(12) CCRC Form 8 (FIN391)--Certification of changes to disclosure statement;

(13) CCRC Form 9 (FIN392)--Notice of request to release entrance fee escrow funds;

(14) CCRC Form 10 (FIN393)--Notice of request to release funds from the reserve fund escrow account;

(15) CCRC Form 11 (FIN394)--Notice by provider of re-payment of previously released funds to the reserve fund escrow account;

(16) CCRC Form 12 (FIN395)--Affidavit of re-payment of previously released funds to the reserve fund escrow account;

(17) CCRC Form 13 (FIN396)--Notice of lien;

(18) CCRC Form 14 (FIN397)--Calculations concerning conditions; and

(19) CCRC Form 14a (FIN607)--Provider request for release of continuing care in residence entrance fee escrow funds.

§33.9. Address for Filings.

(a) All inquiries, correspondence, applications, and other filings under this chapter must be sent to the appropriate physical, mailing, or electronic address:

(1) specified on the applicable department form being used; or

(2) listed on the department website.

(b) Notwithstanding a requirement in this chapter to make a submission in a paper form, any inquiry, correspondence, application, or other filing under this chapter may be submitted electronically to the department, unless specifically requested in a specified format by the department.

§33.10. Unauthorized Providers Required to Respond to Inquiries.

If the Commissioner becomes aware of an unauthorized provider and makes inquiries to determine the applicability of this chapter and the Act to the provider, the recipient of an inquiry must respond within 30 days. The Commissioner may conduct any necessary investigation or examination regarding the inquiry and, if warranted, take action against the provider.

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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Norma Garcia
General Counsel
Texas Department of Insurance
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Proposal publication date: January 18, 2019
For further information, please call: (512) 676-6584

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SUBCHAPTER B. CONTINUING CARE IN RESIDENCE

28 TAC §§33.101 - 33.105

STATUTORY AUTHORITY. Sections 33.101 - 33.105 are adopted under Health and Safety Code §246.003(b) and §246.0737, and Insurance Code §36.001.

Health and Safety Code §246.003(b) authorizes the department to adopt rules to implement Health and Safety Code Chapter 246.

Health and Safety Code §246.0737 directs the Commissioner to establish escrow release requirements for continuing care in residence different from those applicable to facility-based entrance fee escrow funds.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§33.101. Scope.

This subchapter establishes the requirements and procedures for certificates of authority, disclosure statements, and entrance fee escrow accounts applicable to continuing care in residence under Health and Safety Code §246.022. With respect to continuing care in residence, this subchapter governs in case of conflict with other provisions of this chapter.

§33.102. Adding Authority for Continuing Care in Residence.

(a) Sections 33.202, 33.203, 33.205, and 33.206 of this title apply to continuing care in residence.

(b) A person must also hold a certificate of authority to provide continuing care at a facility before the person is eligible to receive authority to provide continuing care in residence. A provider must have authority to provide continuing care in residence before accepting any consideration or entering into any contracts for continuing care in residence.

(c) To apply for authority to provide continuing care in residence, an applicant must submit a CCRC Form 1a (FIN 604), including the following:

(1) the provider's CCRC certificate of authority license number;

(2) format for disclosure statement for continuing care in residence (CCRC Form 6b (FIN605));

(3) a business plan which includes:

(A) a three-year financial projection with associated assumptions;

(B) the geographic region proposed for continuing care in residence services;

(C) evidence of the actuarial review for entrance fee (and related amortization schedule) and service fee amounts;

(D) information regarding resident qualification;

(E) information regarding marketing and advertising activities; and

(F) information regarding refund procedures applicable before a resident receives continuing care in residence services; and

(4) a certified copy of assumed name certificate, if applicable.

(d) Information and filings under this subchapter must be submitted, as applicable, on paper or in an electronic format that is acceptable to the department. The department's submission locations, formats, and contact information are subject to change; persons submitting forms or information must confirm that they are using the most recent version before submitting to the department. CCRC forms are available on the department's website.

(e) The time period specified in Health and Safety Code §246.022 begins when the department has received all required material and information and deems the application complete.

(f) Incomplete applications will expire without refund one year from the date of receipt of the applicant's initial CCRC Form 1a (FIN604) Application for Authority to Offer Continuing Care in Residence Services in the State of Texas under Health and Safety Code §246.0025(b).

§33.103. Disclosure Statement Requirements.

(a) Sections 33.302, 33.303, 33.305, 33.307, and 33.308 of this title apply to continuing care in residence.

(b) The organization and elements of the disclosure statement, including any revisions, must follow the format in CCRC Form 6b (FIN605). The disclosure statement or revision must be submitted in compliance with CCRC Form 6a (FIN389).

(c) The disclosure statement must be submitted to the department before any of the following occur:

(1) the provider contracts to provide continuing care in residence in Texas;

(2) the provider extends the term of an existing contract to provide continuing care in residence in Texas; or

(3) the provider or provider's agent solicits a continuing care contract in Texas for an individual who resides in Texas at the time of the solicitation. A continuing care contract is considered solicited if, during the 12-month period preceding the date on which the continuing care contract is signed or accepted by either party, information concerning the availability of the continuing care in residence contract is given:

(A) by personal, telephone, mail, or other communication directed to and received by a person at a location in Texas; or

(B) in paid advertisements published or broadcast from within Texas, other than in a publication in which more than two-thirds of the circulation is outside Texas.

(d) The provider must submit the initial and annual revisions of the disclosure statement not later than 120 days after the end of the

provider's fiscal year. If the 120th day falls on a weekend or on a recognized state or federal holiday, the due date is the next business day.

(e) The disclosure statement must also include the following:

(1) annual audited financial statements as defined in §33.2 of this title;

(2) annual actuarial review; and

(3) information about how the amortization schedules in care in residence contracts are calculated and applied to releases described under §33.104(b) of this title.

(f) No less than 30 days before entering into a contract with a third-party to manage the provider's continuing care in residence operations, a provider must submit one copy of the management contract to the department as set out in §33.9 of this title.

§33.104. Entrance Fee Escrow Account Requirements.

(a) Sections 33.401(b) - (e) and 33.402(a) of this title apply to continuing care in residence.

(b) Entrance fees must be held in escrow as set forth in Health and Safety Code §246.071. An escrow agent cannot release, and the provider cannot request or accept, entrance fee funds from the escrow agent without department approval. A provider must file CCRC Form 14a (FIN607) to request release of entrance fee escrow funds for identified residents. An escrow agent must file a CCRC Form 9 (FIN392) when a provider requests the agent release entrance fee escrow account funds.

(c) To obtain department approval:

(1) a provider must verify in Form 14a (FIN607) that:

(A) the identified residents are receiving continuing care in residence;

(B) the requested amount complies with amortization schedules contained in the continuing care in residence contracts; and

(C) the provider's assets exceed the actuarial present value of the expected costs of performing all remaining obligations to all residents under continuing care contracts; and

(2) the provider must disclose its operating ratio and current ratio. A provider is not eligible for a release of continuing care in residence entrance fee escrow funds if the provider's:

(A) operating ratio is greater than 100 percent, unless there is a cash flow analysis acceptable to the department; or

(B) current ratio is no greater than 150 percent.

(d) The department will issue a determination on the request for release of continuing care in residence entrance fee escrow funds to both the provider and escrow agent.

§33.105. Contract Requirements for Continuing Care in Residence.

(a) Providers must use a standard form to contract with residents for continuing care in residence.

(b) The standard contract form must:

(1) contain an amortization schedule showing when the provider will be entitled to release of a resident's entrance fee from escrow;

(2) include or reference all the provider's statutory duties and obligations, including the refund provisions of Health and Safety Code §246.057; and

(3) include the following information about the resident's cancellation rights, in bold, capitalized, or underlined type so as to be conspicuous: "You may cancel this contract at any time before midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract, or you receive the provider's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your receiving continuing care in residence services."

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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General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 7. DADS ADMINISTRATIVE RESPONSIBILITIES
SUBCHAPTER B. CONTRACTS MANAGEMENT FOR STATE FACILITIES AND CENTRAL OFFICE

40 TAC §7.59

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §7.59, concerning Award of Construction Contracts, in Title 40, Part 1, Chapter 7, Subchapter B of the Texas Administrative Code (TAC). The repeal is adopted without changes to the proposed text as published in the January 11, 2019, issue of the *Texas Register* (44 TexReg 226), and therefore will not be republished.

Background and Justification

Texas Health and Safety Code, §551.007, requires the HHSC Executive Commissioner to design, construct, equip, furnish, and maintain buildings and improvements authorized by law at facilities under HHSC's jurisdiction. Texas Government Code, §531.0055(e), (f)(4), and (j), also task the Executive Commissioner with the administrative duties of contracting and purchasing and adopting rules necessary to implement these duties. TAC §7.59 requires HHSC to give notice of its intent to award a construction contract by publishing an invitation for bids (IFB) notice twice in two newspapers of general circulation.

The repeal of TAC §7.59 will allow posting of construction contracts on the Electronic State Business Daily and through the use of plan rooms according to state statute. Texas Government Code, Chapter 2269, governs the various procurement methods available for construction contracts. The current administrative rule restricts the procurement method to only one type, and an

IFB is not always the most appropriate procurement method for construction contracts. HHSC should determine the proper procurement method on a case-by-case basis pursuant to Chapter 2269 in order to best meet the business objective and project goals of each procurement. Therefore, HHSC determined that the repeal of §7.59 is necessary to enable the procurement of construction contracts in the most fiscally sound and statutorily compliant manner possible.

HHSC is simultaneously adopting the repeal of §392.411, TAC Title 1, Part 15, Chapter 392, Subchapter E, Contract Management for DSHS Facilities and Central Office, to also allow agency consideration of additional procurement methods available for construction contracts instead of one type. These adopted repeals will make it unnecessary for agency construction contract bids to be placed in newspapers across the state.

Comments

The 30-day comment period ended February 10, 2019. During the comment period, HHSC received one comment from the Texas Press Association against the rule repeal.

Comment: The Texas Press Association stated that repeal of the rule would eliminate needed public notice requirements and would allow HHSC to decide the amount and type of notice required with no oversight regarding the decision.

Response: HHSC declines to make the requested change to the proposed repeal of §7.59. The Texas Press Association's concerns are unwarranted and fail to take into account existing state statutes. HHSC is required to follow state procurement laws regarding the public posting of procurement opportunities as well as the requirements of Texas Government Code Chapter 2269 concerning the contracting and delivery procedures for construction projects. Repealing the administrative rule will not prevent HHSC from publishing notice in a newspaper if the notice is deemed appropriate. However, HHSC will not be required to do so if it determines the statutorily mandated notice is sufficient.

Statutory Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The repeal affects Government Code §531.0055(f)(4), which provides the Executive Commissioner with authority to contract for the Health and Human Services System, and Health and Safety Code §551.007, which requires the Executive Commissioner to build, furnish, and maintain buildings.

The repeal is consistent with Government Code §531.00553 and Government Code Chapter 2269.

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 April 1, 2019.

TRD-201900971
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: April 21, 2019
Proposal publication date: January 11, 2019
For further information, please call: (512) 406-2451

The Alamo
The Rio Grande
Houston Carnival

TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 15, Licensing Standards For Prescribed Pediatric Extended Care Centers are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 550, Licensing Standards For Prescribed Pediatric Extended Care Centers.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 15

TRD-201900976

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 15, Licensing Standards For Prescribed Pediatric Extended Care Centers are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 550, Licensing Standards For Prescribed Pediatric Extended Care Centers.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 15

TRD-201900966

Figure: 40 TAC Chapter 15

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department of Aging and Disability Services** **Chapter 15. Licensing Standards for Prescribed Pediatric Extended Care Centers**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 550. Licensing Standards for Prescribed Pediatric Extended Care Centers**
Subchapter A. Purpose, Scope, Limitations, Compliance, and Definitions	**Subchapter A. Purpose, Scope, Limitations, Compliance, and Definitions**
§15.1. Purpose.	§550.1. Purpose.
§15.2. Scope.	§550.2. Scope.
§15.3. Limitations.	§550.3. Limitations.
§15.4. Compliance.	§550.4. Compliance.
§15.5. Definitions.	§550.5. Definitions.
Subchapter B. Licensing Application, Maintenance, and Fees	**Subchapter B. Licensing Application, Maintenance, and Fees**
§15.101. Criteria and Eligibility for a License.	§550.101. Criteria and Eligibility for a License.
§15.102. General Application Requirements.	§550.102. General Application Requirements.
§15.103. Building Approval.	§550.103. Building Approval.
§15.104. Applicant Disclosure Requirements.	§550.104. Applicant Disclosure Requirements.
§15.105. Initial License Application Procedures and Issuance.	§550.105. Initial License Application Procedures and Issuance.
§15.106. Renewal License Application Procedures and Issuance.	§550.106. Renewal License Application Procedures and Issuance.
§15.108. Change of Ownership License Application Procedures and Issuance.	§550.108. Change of Ownership License Application Procedures and Issuance.
§15.109. Increase in Capacity.	§550.109. Increase in Capacity.
§15.110. Decrease in Capacity.	§550.110. Decrease in Capacity.
§15.111. Relocation.	§550.111. Relocation.
§15.112. Licensing Fees.	§550.112. Licensing Fees.
§15.113. Plan Review Fees.	§550.113. Plan Review Fees.
§15.114. Time Periods for Processing All Types of License Applications.	§550.114. Time Periods for Processing All Types of License Applications.
§15.115. Criteria for Denial of a License.	§550.115. Criteria for Denial of a License.
§15.116. Display of License.	§550.116. Display of License.
§15.117. License Alteration Prohibited.	§550.117. License Alteration Prohibited.
§15.118. Reporting Changes in Application Information.	§550.118. Reporting Changes in Application Information.
§15.119. Notification Procedures for a Change in Administration and Management.	§550.119. Notification Procedures for a Change in Administration and Management.
§15.120. Notification Procedures for a Change of Contact Information.	§550.120. Notification Procedures for a Change of Contact Information.
§15.121. Notification Procedures for a Change in Operating Hours.	§550.121. Notification Procedures for a Change in Operating Hours.
§15.122. Notification Procedures for a Name Change.	§550.122. Notification Procedures for a Name Change.

§15.123. Request and Issuance of Temporary License.	§550.123. Request and Issuance of Temporary License.
Subchapter C. General Provisions	**Subchapter C. General Provisions**
Division 1. Operations and Safety Provisions	**Division 1. Operations and Safety Provisions**
§15.201. Operating Hours.	§550.201. Operating Hours.
§15.202. Suspension of Operations.	§550.202. Suspension of Operations.
§15.203. Financial Solvency and Business Records.	§550.203. Financial Solvency and Business Records.
§15.204. Billing and Insurance Claims.	§550.204. Billing and Insurance Claims.
§15.205. Safety Provisions.	§550.205. Safety Provisions.
§15.206. Person-Centered Direction and Guidance.	§550.206. Person-Centered Direction and Guidance.
§15.207. Protective Devices and Restraints.	§550.207. Protective Devices and Restraints.
§15.208. Equipment, Devices, and Supplies.	§550.208. Equipment, Devices, and Supplies.
§15.209. Emergency Preparedness Planning and Implementation.	§550.209. Emergency Preparedness Planning and Implementation.
§15.210. Sanitation, Housekeeping, and Linens.	§550.210. Sanitation, Housekeeping, and Linens.
§15.211. Infection Prevention and Control Program and Vaccinations Requirements.	§550.211. Infection Prevention and Control Program and Vaccinations Requirements.
Division 2. Administration and Management	**Division 2. Administration and Management**
§15.301. License Holder's Responsibilities.	§550.301. License Holder's Responsibilities.
§15.302. Organizational Structure and Lines of Authority.	§550.302. Organizational Structure and Lines of Authority.
§15.303. Administrator and Alternate Administrator Qualifications and Conditions.	§550.303. Administrator and Alternate Administrator Qualifications and Conditions.
§15.304. Administrator Responsibilities.	§550.304. Administrator Responsibilities.
§15.305. Initial Training in Administration.	§550.305. Initial Training in Administration.
§15.306. Continuing Training in Administration.	§550.306. Continuing Training in Administration.
§15.307. Medical Director Qualifications and Conditions.	§550.307. Medical Director Qualifications and Conditions.
§15.308. Medical Director Responsibilities.	§550.308. Medical Director Responsibilities.
§15.309. Nursing Director and Alternate Nursing Director Qualifications and Conditions.	§550.309. Nursing Director and Alternate Nursing Director Qualifications and Conditions.
§15.310. Nursing Director Responsibilities and Supervision Responsibilities.	§550.310. Nursing Director Responsibilities and Supervision Responsibilities.
§15.311. Prohibition of Solicitation.	§550.311. Prohibition of Solicitation.
Division 3. Nursing and Staffing Requirements	**Division 3. Nursing and Staffing Requirements**
§15.401. Nursing Staff.	§550.401. Nursing Staff.
§15.402. Registered Nurse Qualifications.	§550.402. Registered Nurse Qualifications.
§15.403. Registered Nurse Responsibilities.	§550.403. Registered Nurse Responsibilities.
§15.404. Licensed Vocational Nurse Qualifications.	§550.404. Licensed Vocational Nurse Qualifications.
§15.405. Licensed Vocational Nurse Responsibilities.	§550.405. Licensed Vocational Nurse Responsibilities.
§15.406. Student Nurses.	§550.406. Student Nurses.
§15.407. Nursing Education, Licensure, and Practice.	§550.407. Nursing Education, Licensure, and Practice.

§15.408. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation.	§550.408. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation.
§15.409. Direct Care Staff Qualifications.	§550.409. Direct Care Staff Qualifications.
§15.410. Nursing Services Staffing Ratio.	§550.410. Nursing Services Staffing Ratio.
§15.411. Rehabilitative and Ancillary Professional Staff and Qualifications.	§550.411. Rehabilitative and Ancillary Professional Staff and Qualifications.
§15.412. Peer Review.	§550.412. Peer Review.
§15.413. Contractors.	§550.413. Contractors.
§15.414. Volunteers.	§550.414. Volunteers.
§15.415. Staffing Policies for Staff Orientation, Development, and Training.	§550.415. Staffing Policies for Staff Orientation, Development, and Training.
§15.416. Staff Development Program.	§550.416. Staff Development Program.
§15.417. Personnel Records.	§550.417. Personnel Records.
§15.418. Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements.	§550.418. Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements.
§15.419. Drug Testing Policy.	§550.419. Drug Testing Policy.
Division 4. General Services	**Division 4. General Services**
§15.501. Basic Services.	§550.501. Basic Services.
§15.502. Medical Services.	§550.502. Medical Services.
§15.503. Nursing Services.	§550.503. Nursing Services.
§15.504. Psychosocial Treatment and Services.	§550.504. Psychosocial Treatment and Services.
§15.505. Social Services.	§550.505. Social Services.
§15.506. Rehabilitative Services.	§550.506. Rehabilitative Services.
§15.507. Functional Developmental Services.	§550.507. Functional Developmental Services.
§15.508. Educational Developmental Services.	§550.508. Educational Developmental Services.
§15.509. Parent Training.	§550.509. Parent Training.
§15.510. Nutritional Counseling.	§550.510. Nutritional Counseling.
§15.511. Dietary Services.	§550.511. Dietary Services.
Division 5. Admission Criteria, Conference, Assessment, Interdisciplinary Plan of Care, and Discharge or Transfer	**Division 5. Admission Criteria, Conference, Assessment, Interdisciplinary Plan of Care, and Discharge or Transfer**
§15.601. Admission Criteria.	§550.601. Admission Criteria.
§15.602. Pre-admission Conference.	§550.602. Pre-admission Conference.
§15.603. Agreement and Disclosure.	§550.603. Agreement and Disclosure.
§15.604. Admission Procedures.	§550.604. Admission Procedures.
§15.605. Initial and Updated Comprehensive Assessment.	§550.605..Initial and Updated Comprehensive Assessment.
§15.606. Interdisciplinary Team.	§550.606. Interdisciplinary Team.
§15.607. Initial and Updated Plan of Care.	§550.607. Initial and Updated Plan of Care.
§15.608. Discharge or Transfer Notification.	§550.608. Discharge or Transfer Notification.
Division 6. Physician, Pharmacy, Medication, and Laboratory Services	**Division 6. Physician, Pharmacy, Medication, and Laboratory Services**
§15.701. Physician Orders.	§550.701. Physician Orders.
§15.702. Receiving Physician Orders.	§550.702. Receiving Physician Orders.
§15.703. Pharmacist Services.	§550.703. Pharmacist Services.

§15.704. Storage of Medication.	§550.704. Storage of Medication.
§15.705. Administration of Medication.	§550.705. Administration of Medication.
§15.706. Laboratory Services.	§550.706. Laboratory Services.
§15.707. Disposal of Special or Medical Waste.	§550.707. Disposal of Special or Medical Waste.
§15.708. Disposal and Destruction of Pharmaceuticals.	§550.708. Disposal and Destruction of Pharmaceuticals.
Division 7. Care Policies, Coordination of Services, and Census	**Division 7. Care Policies, Coordination of Services, and Census**
§15.801. Care Policies.	§550.801. Care Policies.
§15.802. Coordination of Services.	§550.802. Coordination of Services.
§15.803. Census.	§550.803. Census.
Division 8. Rights and Responsibilities, Advance Directives, Abuse, Neglect, and Exploitation, Investigations, Death Reporting, and Inspection Results	**Division 8. Rights and Responsibilities, Advance Directives, Abuse, Neglect, and Exploitation, Investigations, Death Reporting, and Inspection Results**
§15.901. Rights and Responsibilities.	§550.901. Rights and Responsibilities.
§15.902. Advance Directives.	§550.902. Advance Directives.
§15.903. Abuse, Neglect, or Exploitation Reportable to DADS.	§550.903. Abuse, Neglect, or Exploitation Reportable to DADS.
§15.904. Investigations of a Complaint and Grievance.	§550.904. Investigations of a Complaint and Grievance.
§15.905. Reporting of a Minor's Death.	§550.905. Reporting of a Minor's Death.
§15.906. Examination of Inspection Results.	§550.906. Examination of Inspection Results.
Division 9. Medical Records, Quality Assessment and Performance Improvement, Dissolution and Retention of Records	**Division 9. Medical Records, Quality Assessment and Performance Improvement, Dissolution and Retention of Records**
§15.1001. Medical Records.	§550.1001. Medical Records.
§15.1002. Quality Assessment and Performance Improvement.	§550.1002. Quality Assessment and Performance Improvement.
§15.1003. Dissolution.	§550.1003. Dissolution.
§15.1004. Retention of Records.	§550.1004. Retention of Records.
Subchapter D. Transportation	**Subchapter D. Transportation**
§15.1101. Transportation Services.	§550.1101. Transportation Services.
§15.1102. Transportation Safety Provisions.	§550.1102. Transportation Safety Provisions.
Subchapter E. Building Requirements	**Subchapter E. Building Requirements**
§15.1201. General Requirements.	§550.1201. General Requirements.
§15.1202. Plan Reviews.	§550.1202. Plan Reviews.
§15.1203. Design Criteria.	§550.1203. Design Criteria.
§15.1204. Fire Safety.	§550.1204. Fire Safety.
§15.1205. Distinct Part Facilities and Physical and Programmatic Separation.	§550.1205. Distinct Part Facilities and Physical and Programmatic Separation.
§15.1206. Exterior Spaces.	§550.1206. Exterior Spaces.
§15.1207. Interior Spaces.	§550.1207. Interior Spaces.
§15.1208. Food Preparation.	§550.1208. Food Preparation.
§15.1209. Toileting Facilities.	§550.1209. Toileting Facilities.
§15.1210. Minor's Personal Belongings.	§550.1210. Minor's Personal Belongings.
§15.1211. Linen Storage.	§550.1211. Linen Storage.

§15.1212. Janitorial Supplies.	§550.1212. Janitorial Supplies.
§15.1213. Locked Areas.	§550.1213. Locked Areas.
§15.1214. File Storage.	§550.1214. File Storage.
§15.1215. Garbage.	§550.1215. Garbage.
§15.1216. Furnishings and Equipment.	§550.1216. Furnishings and Equipment.
§15.1217. Laundry.	§550.1217. Laundry.
§15.1218. Housekeeping.	§550.1218. Housekeeping.
§15.1219. Maintenance.	§550.1219. Maintenance.
§15.1220. Heating, Ventilation, Air Conditioning (HVAC).	§550.1220. Heating, Ventilation, Air Conditioning (HVAC).
§15.1221. Water Supply.	§550.1221.Water Supply.
§15.1222. Sewage.	§550.1222. Sewage.
§15.1223. Signage.	§550.1223. Signage.
§15.1224. Waivers.	§550.1224. Waivers.
Subchapter F. Inspections and Visits	**Subchapter F. Inspections and Visits**
§15.1301. Inspections and Visits.	§550.1301. Inspections and Visits.
§15.1302. Investigation of Complaints and Self-Reported Incidents.	§550.1302. Investigation of Complaints and Self-Reported Incidents.
§15.1303. Cooperation with an Inspection and Visit.	§550.1303. Cooperation with an Inspection and Visit.
§15.1304. Staff Requirements for an Inspection.	§550.1304. Staff Requirements for an Inspection.
§15.1305. General Provisions.	§550.1305. General Provisions.
Subchapter G. Enforcement	**Subchapter G. Enforcement**
§15.1401. Denial of License Application.	§550.1401. Denial of License Application.
§15.1402. License Suspension.	§550.1402. License Suspension.
§15.1403. Emergency License Suspension.	§550.1403. Emergency License Suspension.
§15.1404. License Revocation.	§550.1404. License Revocation.
§15.1405. Probation.	§550.1405. Probation.
§15.1406. Injunctive Relief or Civil Penalties.	§550.1406. Injunctive Relief or Civil Penalties.
§15.1407. Opportunity to Show Compliance.	§550.1407. Opportunity to Show Compliance.
§15.1408. Administrative Penalties.	§550.1408. Administrative Penalties.
§15.1409. Operation of a Center without a License.	§550.1409. Operation of a Center without a License.

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Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 18, Nursing Facility Administrators are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 555, Nursing Facility Administrators.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 18

TRD-201900977

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred

to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 18, Nursing Facility Administrators are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 555, Nursing Facility Administrators.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 18

TRD-201900967

Figure: 40 TAC Chapter 18

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department of Aging and Disability Services** **Chapter 18. Nursing Facility Administrators**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 555. Nursing Facility Administrators**
Subchapter A. General Information	**Subchapter A. General Information**
§18.1. Purpose.	§555.1. Purpose.
§18.2. Definitions.	§555.2. Definitions.
§18.4. Schedule of Fees.	§555.4. Schedule of Fees.
Subchapter B. Requirements for Licensure	**Subchapter B. Requirements for Licensure**
§18.11. Academic Requirements.	§555.11. Academic Requirements.
§18.12. Internship Requirements.	§555.12. Internship Requirements.
§18.13. Alternate Education, Training, and Experience.	§555.13. Alternate Education, Training, and Experience.
§18.14. Preceptor Requirements.	§555.14. Preceptor Requirements.
§18.15. Application Requirements.	§555.15. Application Requirements.
§18.16. Examinations.	§555.16. Examinations.
Subchapter C. Licenses	**Subchapter C. Licenses**
§18.31. Initial License.	§555.31. Initial License.
§18.32. Provisional License.	§555.32. Provisional License.
§18.33. Duplicate License.	§555.33. Duplicate License.
§18.34. License Renewal.	§555.34. License Renewal.
§18.35. Continuing Education Requirements for License Renewal.	§555.35. Continuing Education Requirements for License Renewal.
§18.36. Late Renewals.	§555.36. Late Renewals.
§18.37. Denial of License Renewal.	§555.37. Denial of License Renewal.
§18.38. Inactive Status.	§555.38. Inactive Status.
§18.39. Voluntary Surrender of a License.	§555.39. Voluntary Surrender of a License.
§18.40. Reinstatement.	§555.40. Reinstatement.
§18.41. Licensure of Persons with Criminal Backgrounds.	§555.41. Licensure of Persons with Criminal Backgrounds.
§18.42. Alternate Licensing Requirements for Military Service Personnel.	§555.42. Alternate Licensing Requirements for Military Service Personnel.
Subchapter D. Referrals, Complaint Procedures, and Sanctions	**Subchapter D. Referrals, Complaint Procedures, and Sanctions**
§18.51. Referral and Complaint Procedures.	§555.51. Referral and Complaint Procedures.
§18.52. Informal Reviews.	§555.52. Informal Reviews.
§18.53. Formal Hearings.	§555.53. Formal Hearings.
§18.54. Rule or Statutory Violations.	§555.54. Rule or Statutory Violations.
§18.55. Violations of Standards of Conduct.	§555.55. Violations of Standards of Conduct.
§18.56. Violations by Unlicensed Persons.	§555.56. Violations by Unlicensed Persons.
§18.57. Schedule of Sanctions.	§555.57. Schedule of Sanctions.

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Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 90, Intermediate Care Facilities For Individuals With An Intellectual Disability Or Related Conditions are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 551, Intermediate Care Facilities For Individuals With An Intellectual Disability Or Related Conditions.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 90

TRD-201900978

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 90, Intermediate Care Facilities For Individuals With An Intellectual Disability Or Related Conditions are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 551, Intermediate Care Facilities For Individuals With An Intellectual Disability Or Related Conditions.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 90

TRD-201900968

Figure: 40 TAC Chapter 90

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department of Aging and Disability Services** **Chapter 90. Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 551. Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions**
Subchapter A. Introduction	**Subchapter A. Introduction**
§90.2. Scope.	§551.2. Scope.
§90.3. Definitions.	§551.3. Definitions.
Subchapter B. Application Procedures	**Subchapter B. Application Procedures**
§90.11. Criteria for Licensing.	§551.11. Criteria for Licensing.
§90.12. Building Approval.	§551.12. Building Approval.
§90.13. Applicant Disclosure Requirements.	§551.13. Applicant Disclosure Requirements.
§90.14. Increase in Capacity.	§551.14. Increase in Capacity.
§90.15. Renewal Procedures and Qualifications.	§551.15. Renewal Procedures and Qualifications.
§90.16. Change of Ownership and Notice of Changes.	§551.16. Change of Ownership and Notice of Changes.
§90.17. Criteria for Denying a License or Renewal of a License.	§551.17. Criteria for Denying a License or Renewal of a License.
§90.18. Informal Reconsideration.	§551.18. Informal Reconsideration.
§90.19. License Fees.	§551.19. License Fees.
§90.20. Plan Review Fees.	§551.20. Plan Review Fees.
§90.21. Time Periods for Processing License Applications.	§551.21. Time Periods for Processing License Applications.
§90.22. Relocation.	§551.22. Relocation.
Subchapter C. Standards for Licensure	**Subchapter C. Standards for Licensure**
§90.42. Standards for Facilities Serving Individuals with an Intellectual Disability or Related Conditions.	§551.42. Standards for Facilities Serving Individuals with an Intellectual Disability or Related Conditions.
§90.43. Administration of Medication.	§551.43. Administration of Medication.
§90.44. Trauma-Informed Care Training.	§551.44. Trauma-Informed Care Training.
§90.45. Wheelchair Self-Release Seat Belts.	§551.45. Wheelchair Self-Release Seat Belts.
§90.50. Emergency Preparedness and Response.	§551.50. Emergency Preparedness and Response.
Subchapter D. General Requirements for Facility Construction	**Subchapter D. General Requirements for Facility Construction**
§90.60. Construction and Initial Survey of Completed Construction.	§551.60. Construction and Initial Survey of Completed Construction.
§90.61. Introduction, Application, and General Requirements for Facilities for	§551.61. Introduction, Application, and General Requirements for Facilities for

Persons with an Intellectual Disability or Related Conditions.	Persons with an Intellectual Disability or Related Conditions.
§90.62. Site and Grounds.	§551.62. Site and Grounds.
§90.63. Fire Service.	§551.63. Fire Service.
§90.64. Means of Egress.	§551.64. Means of Egress.
§90.65. Fire Alarms, Detection Systems, and Sprinkler Systems.	§551.65. Fire Alarms, Detection Systems, and Sprinkler Systems.
§90.66. Portable Fire Extinguishers.	§551.66. Portable Fire Extinguishers.
§90.67. Accessibility Provisions.	§551.67. Accessibility Provisions.
§90.68. Architectural Space Planning.	§551.68. Architectural Space Planning.
§90.69. Storage Requirements (All Facilities).	§551.69. Storage Requirements (All Facilities).
§90.70. Electrical, Heating, Ventilating, and Air-conditioning Systems (HVAC)--All Facilities.	§551.70. Electrical, Heating, Ventilating, and Air-conditioning Systems (HVAC)--All Facilities.
§90.71. Plumbing (All Facilities).	§551.71. Plumbing (All Facilities).
§90.72. Maintenance (All Facilities).	§551.72. Maintenance (All Facilities).
§90.73. Environmental Services.	§551.73. Environmental Services.
§90.74. Safety Operations.	§551.74. Safety Operations.
§90.75. Plans, Approvals, and Construction Procedures.	§551.75. Plans, Approvals, and Construction Procedures.
Subchapter F. Inspections, Surveys, and Visits	**Subchapter F. Inspections, Surveys, and Visits**
§90.191. Procedural Requirements.	§551.191. Procedural Requirements.
§90.192. Determinations and Actions Pursuant to Inspections, Surveys, or Investigations.	§551.192. Determinations and Actions Pursuant to Inspections, Surveys, or Investigations.
Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations	**Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations**
§90.212. Reporting Abuse, Neglect, and Exploitation to DFPS.	§551.212. Reporting Abuse, Neglect, and Exploitation to DFPS.
§90.213. Reporting Incidents to DADS.	§551.213. Reporting Incidents to DADS.
§90.214. Protection of Residents After Report of Abuse, Neglect, and Exploitation.	§551.214. Protection of Residents After Report of Abuse, Neglect, and Exploitation.
§90.215. Employee Statement.	§551.215. Employee Statement.
§90.217. Reporting of Resident Death Information.	§551.217. Reporting of Resident Death Information.
Subchapter H. Enforcement	**Subchapter H. Enforcement**
§90.231. Warning Letter.	§551.231. Warning Letter.
§90.232. License Suspension.	§551.232. License Suspension.
§90.233. Revocation.	§551.233. Revocation.
§90.234. Emergency License Suspension and Closing Order.	§551.234. Emergency License Suspension and Closing Order.
§90.235. Referral to the Attorney General.	§551.235. Referral to the Attorney General.
§90.236. Administrative Penalties.	§551.236 Administrative Penalties

§90.237. Appointment of a Trustee by Agreement.	§551.237. Appointment of a Trustee by Agreement.
§90.238. Involuntary Appointment of a Trustee.	§551.238. Involuntary Appointment of a Trustee.
§90.239. Notification of Closure.	§551.239. Notification of Closure.
§90.240. Right to Correct.	§551.240. Right to Correct.
§90.241. Amelioration of Violation.	§551.241. Amelioration of Violation.
Subchapter J. Respite Care	**Subchapter J. Respite Care**
§90.281. Generally.	§551.281. Generally.
§90.282. Definitions.	§551.282. Definitions.
§90.283. Plan of Care.	§551.283. Plan of Care.
§90.284. Notification.	§551.284. Notification.
§90.285. Inspections.	§551.285. Inspections.
§90.286. Suspension.	§551.286. Suspension.
§90.287. Licensed Capacity.	§551.287. Licensed Capacity.
Subchapter L. Provisions Applicable to Facilities Generally	**Subchapter L. Provisions Applicable to Facilities Generally**
§90.321. Determination of Employability.	§551.321. Determination of Employability.
§90.323. Procedures for Inspection of Public Records.	§551.323. Procedures for Inspection of Public Records.
§90.324. Emergency Medication Kit.	§551.324. Emergency Medication Kit.
§90.325. Controlled Substances.	§551.325. Controlled Substances.
§90.326. Required Postings.	§551.326. Required Postings.
§90.327. Notice of Changes in Key Personnel.	§551.327. Notice of Changes in Key Personnel.
§90.328. Retaliation Prohibited.	§551.328. Retaliation Prohibited.
§90.329. Vaccine Preventable Diseases.	§551.329. Vaccine Preventable Diseases.

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Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 92, Licensing Standards For Assisted Living Facilities are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 553, Licensing Standards For Assisted Living Facilities.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 92

TRD-201900979

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 92, Licensing Standards For Assisted Living Facilities are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 553, Licensing Standards For Assisted Living Facilities.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 92

TRD-201900969

Figure: 40 TAC Chapter 92

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department of Aging and Disability Services** **Chapter 92. Licensing Standards for Assisted Living Facilities**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 553. Licensing Standards for Assisted Living Facilities**
Subchapter A. Introduction	**Subchapter A. Introduction**
§92.1. Purpose and Application.	§553.1. Purpose and Application.
§92.2. Definitions.	§553.2. Definitions.
§92.3. Types of Assisted Living Facilities.	§553.3. Types of Assisted Living Facilities.
§92.4. License Fees.	§553.4. License Fees.
§92.5. Health Care Professional.	§553.5. Health Care Professional.
§92.6. General Characteristics of a Resident.	§553.6. General Characteristics of a Resident.
Subchapter B. Application Procedures	**Subchapter B. Application Procedures**
§92.11. Criteria for Licensing.	§553.11. Criteria for Licensing.
§92.12. General Application Requirements.	§553.12. General Application Requirements.
§92.13. Time Periods for Processing All Types of License Applications.	§553.13. Time Periods for Processing All Types of License Applications.
§92.14. Initial License Application Procedures and Requirements.	§553.14. Initial License Application Procedures and Requirements.
§92.15. Renewal Procedures and Qualifications.	§553.15. Renewal Procedures and Qualifications.
§92.16. Change of Ownership and Notice of Changes.	§553.16. Change of Ownership and Notice of Changes.
§92.17. Relocation.	§553.17. Relocation.
§92.18. Increase in Capacity.	§553.18. Increase in Capacity.
§92.19. Decrease in Capacity.	§553.19. Decrease in Capacity.
§92.20. Provisional License.	§553.20. Provisional License.
§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.	§553.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.
§92.22. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.	§553.22. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.
Subchapter C. Standards for Licensure	**Subchapter C. Standards for Licensure**
§92.41. Standards for Type A and Type B Assisted Living Facilities.	§553.41. Standards for Type A and Type B Assisted Living Facilities.
§92.42. Guardianship Record Requirements.	§553.42. Guardianship Record Requirements.
§92.43. Policy for Residents with Alzheimer's Disease or a Related Disorder.	§553.43. Policy for Residents with Alzheimer's Disease or a Related Disorder.
§92.51. Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.	§553.51. Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities.	§553.53. Standards for Certified Alzheimer's Assisted Living Facilities.

§92.54. Advertisements, Solicitations, and Promotional Material.	§553.54. Advertisements, Solicitations, and Promotional Material.
Subchapter D. Facility Construction	**Subchapter D. Facility Construction**
§92.61. Introduction and Application.	§553.61. Introduction and Application.
§92.62. General Requirements.	§553.62. General Requirements.
§92.63. Construction and Initial Survey of Completed Construction.	§553.63. Construction and Initial Survey of Completed Construction.
§92.64. Plans, Approvals, and Construction Procedures.	§553.64. Plans, Approvals, and Construction Procedures.
Subchapter E. Inspections, Surveys, and Visits	**Subchapter E. Inspections, Surveys, and Visits**
§92.81. Inspections and Surveys.	§553.81. Inspections and Surveys.
§92.82. Determinations and Actions.	§553.82. Determinations and Actions.
§92.83. Informal Dispute Resolution.	§553.83. Informal Dispute Resolution.
Subchapter F. Abuse, Neglect and Exploitation; Complaint and Incident Reports and Investigations	**Subchapter F. Abuse, Neglect and Exploitation; Complaint and Incident Reports and Investigations**
§92.102. Abuse, Neglect, or Exploitation Reportable to DADS.	§553.102. Abuse, Neglect, or Exploitation Reportable to DADS.
§92.103. Complaint Investigation.	§553.103. Complaint Investigation.
§92.105. Investigations of Complaints.	§553.105. Investigations of Complaints.
§92.106. General Provisions.	§553.106. General Provisions.
Subchapter G. Miscellaneous Provisions	**Subchapter G. Miscellaneous Provisions**
§92.123. Investigation of Facility Employees.	§553.123. Investigation of Facility Employees.
§92.124. Procedures for Inspection of Public Records.	§553.124. Procedures for Inspection of Public Records.
§92.125. Resident's Bill of Rights and Provider Bill of Rights.	§553.125. Resident's Bill of Rights and Provider Bill of Rights.
§92.126. Publication of Rules.	§553.126. Publication of Rules.
§92.127. Required Postings.	§553.127. Required Postings.
§92.128. Wheelchair Self-Release Seat Belts.	§553.128. Wheelchair Self-Release Seat Belts.
§92.129. Authorized Electronic Monitoring (AEM).	§553.129. Authorized Electronic Monitoring (AEM).
Subchapter H. Enforcement	**Subchapter H. Enforcement**
Division 1. General Information	**Division 1. General Information**
§92.151. When may DHS take an enforcement action?	§553.151. When may DHS take an enforcement action?
§92.152. What enforcement actions may DHS take?	§553.152. What enforcement actions may DHS take?
Division 2. Actions Against a License: Suspension	**Division 2. Actions Against a License: Suspension**
§92.201. When may DHS suspend a facility's license?	§553.201. When may DHS suspend a facility's license?
§92.202. Does DHS provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?	§553.202. Does DHS provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?

§92.203. May DHS suspend a license at the same time another enforcement action is occurring?	§553.203. May DHS suspend a license at the same time another enforcement action is occurring?
§92.204. How does DHS notify a license holder of a proposed suspension?	§553.204. How does DHS notify a license holder of a proposed suspension?
§92.205. What information does DHS provide the license holder concerning a proposed suspension?	§553.205. What information does DHS provide the license holder concerning a proposed suspension?
§92.206. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to suspend a license?	§553.206. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to suspend a license?
§92.207. How does a license holder request an opportunity to show compliance?	§553.207. How does a license holder request an opportunity to show compliance?
§92.208. How much time does a license holder have to request an opportunity to show compliance?	§553.208. How much time does a license holder have to request an opportunity to show compliance?
§92.209. What must the request for an opportunity to show compliance contain?	§553.209. What must the request for an opportunity to show compliance contain?
§92.210. How does DHS conduct the opportunity to show compliance?	§553.210. How does DHS conduct the opportunity to show compliance?
§92.211. Does DHS give the license holder a written affirmation or reversal of the proposed action?	§553.211. Does DHS give the license holder a written affirmation or reversal of the proposed action?
§92.212. How does DHS notify a license holder of its final decision to suspend a license?	§553.212. How does DHS notify a license holder of its final decision to suspend a license?
§92.213. May the facility request a formal hearing?	§553.213. May the facility request a formal hearing?
§92.214. How long does a license holder have to request a formal hearing?	§553.214. How long does a license holder have to request a formal hearing?
§92.215. If a license holder does not appeal, when does the suspension take effect?	§553.215. If a license holder does not appeal, when does the suspension take effect?
§92.216. If a license holder appeals, when does the suspension take effect?	§553.216. If a license holder appeals, when does the suspension take effect?
§92.217. May a facility operate during a suspension?	§553.217. May a facility operate during a suspension?
§92.218. How long is the suspension?	§553.218. How long is the suspension?
§92.219. How does DHS decide to remove the suspension?	§553.219. How does DHS decide to remove the suspension?
§92.220. Must the license be returned to DHS during a license suspension?	§553.220. Must the license be returned to DHS during a license suspension?
Division 3. Actions Against a License: Revocation	**Division 3. Actions Against a License: Revocation**
§92.251. When may DHS revoke a license?	§553.251. When may DHS revoke a license?
§92.252. Does DHS provide notice of a	§553.252. Does DHS provide notice of a

license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?	license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?
§92.253. May DHS take more than one enforcement action at a time against a license?	§553.253. May DHS take more than one enforcement action at a time against a license?
§92.254. How will DHS notify a license holder of a proposed revocation?	§553.254. How will DHS notify a license holder of a proposed revocation?
§92.255. What information does DHS provide the license holder concerning a proposed revocation?	§553.255. What information does DHS provide the license holder concerning a proposed revocation?
§92.256. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to revoke a license?	§553.256. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to revoke a license?
§92.257. How does a license holder request an opportunity to show compliance?	§553.257. How does a license holder request an opportunity to show compliance?
§92.258. How much time does a license holder have to request an opportunity to show compliance?	§553.258. How much time does a license holder have to request an opportunity to show compliance?
§92.259. What must the request for the opportunity to show compliance contain?	§553.259. What must the request for the opportunity to show compliance contain?
§92.260. How does DHS conduct the opportunity to show compliance?	§553.260. How does DHS conduct the opportunity to show compliance?
§92.261. Does DHS give the license holder a written affirmation or reversal of the proposed action?	§553.261. Does DHS give the license holder a written affirmation or reversal of the proposed action?
§92.262. Does the license holder have an opportunity for a formal hearing?	§553.262. Does the license holder have an opportunity for a formal hearing?
§92.263. How long does a license holder have to request a formal hearing?	§553.263. How long does a license holder have to request a formal hearing?
§92.264. When does the revocation take effect if the license holder does not appeal?	§553.264. When does the revocation take effect if the license holder does not appeal?
§92.265. When does the revocation take effect if the license holder appeals the revocation?	§553.265. When does the revocation take effect if the license holder appeals the revocation?
§92.266. May a facility operate during a revocation?	§553.266. May a facility operate during a revocation?
§92.267. What happens to a license if it is revoked?	§553.267. What happens to a license if it is revoked?
Division 4. Actions Against a License: Temporary Restraining Orders and Injunctions	**Division 4. Actions Against a License: Temporary Restraining Orders and Injunctions**
§92.301. Why would DHS refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?	§553.301. Why would DHS refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?
§92.302. To whom does DHS refer a facility that is operating without a license?	§553.302. To whom does DHS refer a facility that is operating without a license?

Division 5. Actions Against a License: Emergency License Suspension and Closing Order	Division 5. Actions Against a License: Emergency License Suspension and Closing Order
§92.351. When may DHS suspend a license or order an immediate closing of all or part of a facility?	§553.351. When may DHS suspend a license or order an immediate closing of all or part of a facility?
§92.352. How does DHS notify a facility of a license suspension or immediate closing of all or part of a facility?	§553.352. How does DHS notify a facility of a license suspension or immediate closing of all or part of a facility?
§92.353. When does an order suspending a license or closing all or part of a facility go into effect?	§553.353. When does an order suspending a license or closing all or part of a facility go into effect?
§92.354. How long is an order suspending a license or closing all or part of a facility valid?	§553.354. How long is an order suspending a license or closing all or part of a facility valid?
§92.355. May a license holder request a hearing?	§553.355. May a license holder request a hearing?
§92.356. Where can a license holder find information about administrative hearings?	§553.356. Where can a license holder find information about administrative hearings?
§92.357. Does a request for an administrative hearing suspend the effectiveness of the order?	§553.357. Does a request for an administrative hearing suspend the effectiveness of the order?
§92.358. Does anything happen to a resident's rights or freedom of choice during an emergency relocation?	§553.358. Does anything happen to a resident's rights or freedom of choice during an emergency relocation?
§92.359. Who does DHS notify if all or part of a facility is closed?	§553.359. Who does DHS notify if all or part of a facility is closed?
§92.360. Who must a facility notify if all or part of the facility is closed?	§553.360. Who must a facility notify if all or part of the facility is closed?
§92.361. Who decides where to relocate a resident?	§553.361. Who decides where to relocate a resident?
§92.362. Who arranges the relocation?	§553.362. Who arranges the relocation?
§92.363. Is a resident's preference considered?	§553.363. Is a resident's preference considered?
§92.364. What requirements must the facility a resident chooses for relocation meet?	§553.364. What requirements must the facility a resident chooses for relocation meet?
§92.365. Is a receiving facility allowed to temporarily exceed its licensed capacity?	§553.365. Is a receiving facility allowed to temporarily exceed its licensed capacity?
§92.366. Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?	§553.366. Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?
§92.367. What requirements must a facility meet to obtain a temporary waiver?	§553.367. What requirements must a facility meet to obtain a temporary waiver?
§92.368. How long can a facility have a temporary waiver?	§553.368. How long can a facility have a temporary waiver?
§92.369. Does DHS monitor a facility with a temporary waiver?	§553.369. Does DHS monitor a facility with a temporary waiver?
§92.370. What records, reports, and supplies are sent to the receiving facility for transferred residents?	§553.370. What records, reports, and supplies are sent to the receiving facility for transferred residents?

§92.371. May a resident return to the closed facility if it reopens within 90 calendar days?	§553.371. May a resident return to the closed facility if it reopens within 90 calendar days?
§92.372. Do the relocated residents have any special admission rights at the closed facility?	§553.372. Do the relocated residents have any special admission rights at the closed facility?
§92.373. What options does a relocated resident have?	§553.373. What options does a relocated resident have?
§92.374. Are relocated residents who return to the facility considered new admissions?	§553.374. Are relocated residents who return to the facility considered new admissions?
Division 6. Actions Against a License: Civil Penalties	**Division 6. Actions Against a License: Civil Penalties**
§92.401. When may DHS refer a facility to the Office of the Attorney General for assessment of civil penalties?	§553.401. When may DHS refer a facility to the Office of the Attorney General for assessment of civil penalties?
§92.402. What is the amount of the civil penalty that can be assessed for operating without a license?	§553.402. What is the amount of the civil penalty that can be assessed for operating without a license?
Division 7. Trustees: Involuntary Appointment of a Trustee	**Division 7. Trustees: Involuntary Appointment of a Trustee**
§92.451. When may DHS petition a court for the involuntary appointment of a trustee to operate a facility?	§553.451. When may DHS petition a court for the involuntary appointment of a trustee to operate a facility?
§92.452. When may DHS disburse emergency assistance funds?	§553.452. When may DHS disburse emergency assistance funds?
§92.453. Must a facility reimburse DHS for emergency assistance funds?	§553.453. Must a facility reimburse DHS for emergency assistance funds?
§92.454. When is reimbursement for emergency assistance funds due to DHS?	§553.454. When is reimbursement for emergency assistance funds due to DHS?
§92.455. Who is responsible for reimbursement?	§553.455. Who is responsible for reimbursement?
§92.456. What happens if a facility does not reimburse DHS in one year?	§553.456. What happens if a facility does not reimburse DHS in one year?
Division 8. Trustees: Appointment of a Trustee by Agreement	**Division 8. Trustees: Appointment of a Trustee by Agreement**
§92.501. May a facility request the appointment of a trustee to assume operation of a facility?	§553.501. May a facility request the appointment of a trustee to assume operation of a facility?
§92.502. Who may make the request?	§553.502. Who may make the request?
§92.503. What are the requirements for a trustee agreement?	§553.503. What are the requirements for a trustee agreement?
§92.504. When does an agreement for a trustee terminate?	§553.504. When does an agreement for a trustee terminate?
§92.505. What happens if the controlling person wants to terminate the agreement, but DHS determines termination of the agreement is not in the best interest of the residents?	§553.505. What happens if the controlling person wants to terminate the agreement, but DHS determines termination of the agreement is not in the best interest of the residents?

§92.506. When DHS appoints a trustee, is the facility always required to pay assessed civil money penalties?	§553.506. When DHS appoints a trustee, is the facility always required to pay assessed civil money penalties?
Division 9. Administrative Penalties	**Division 9. Administrative Penalties**
§92.551. Administrative Penalties	§553.551. Administrative Penalties
Division 10. Arbitration	**Division 10. Arbitration**
§92.601. Arbitration.	§553.601. Arbitration.
Subchapter I. Access to Residents and Records by the Long-Term Care Ombudsman Program	**Subchapter I. Access to Residents and Records by the Long-Term Care Ombudsman Program**
§92.801. Access to Residents and Records by the State Long-Term Care Ombudsman Program.	§553.801. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

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Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 97, Licensing Standards for Home and Community Support Services Agencies are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 558, Licensing Standards for Home and Community Support Services Agencies.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 97

TRD-201900980

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 97, Licensing Standards for Home and Community Support Services Agencies are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 558, Licensing Standards for Home and Community Support Services Agencies.

The rules will be transferred in the Texas Administrative Code effective May 1, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 97

TRD-201900970

Figure: 40 TAC Chapter 97

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department of Aging and Disability Services** **Chapter 97. Licensing Standards for Home and Community Support Services Agencies**	**Move to** **Title 26. Health and Human Services** **Part 1. Texas Health and Human Services Commission** **Chapter 558. Licensing Standards for Home and Community Support Services Agencies**
Subchapter A. General Provisions	**Subchapter A. General Provisions**
§97.1. Purpose and Scope.	§558.1. Purpose and Scope.
§97.2. Definitions.	§558.2. Definitions.
§97.3. License Fees.	§558.3. License Fees.
Subchapter B. Criteria and Eligibility, Application Procedures, and Issuance of a License	**Subchapter B. Criteria and Eligibility, Application Procedures, and Issuance of a License**
§97.11. Criteria and Eligibility for Licensing.	§558.11. Criteria and Eligibility for Licensing.
§97.13. Application Procedures for an Initial License.	§558.13. Application Procedures for an Initial License.
§97.15. Issuance of an Initial License.	§558.15. Issuance of an Initial License.
§97.17. Application Procedures for a Renewal License.	§558.17. Application Procedures for a Renewal License.
§97.19. Issuance of a Renewal License.	§558.19. Issuance of a Renewal License.
§97.21. Denial of an Application or a License.	§558.21. Denial of an Application or a License.
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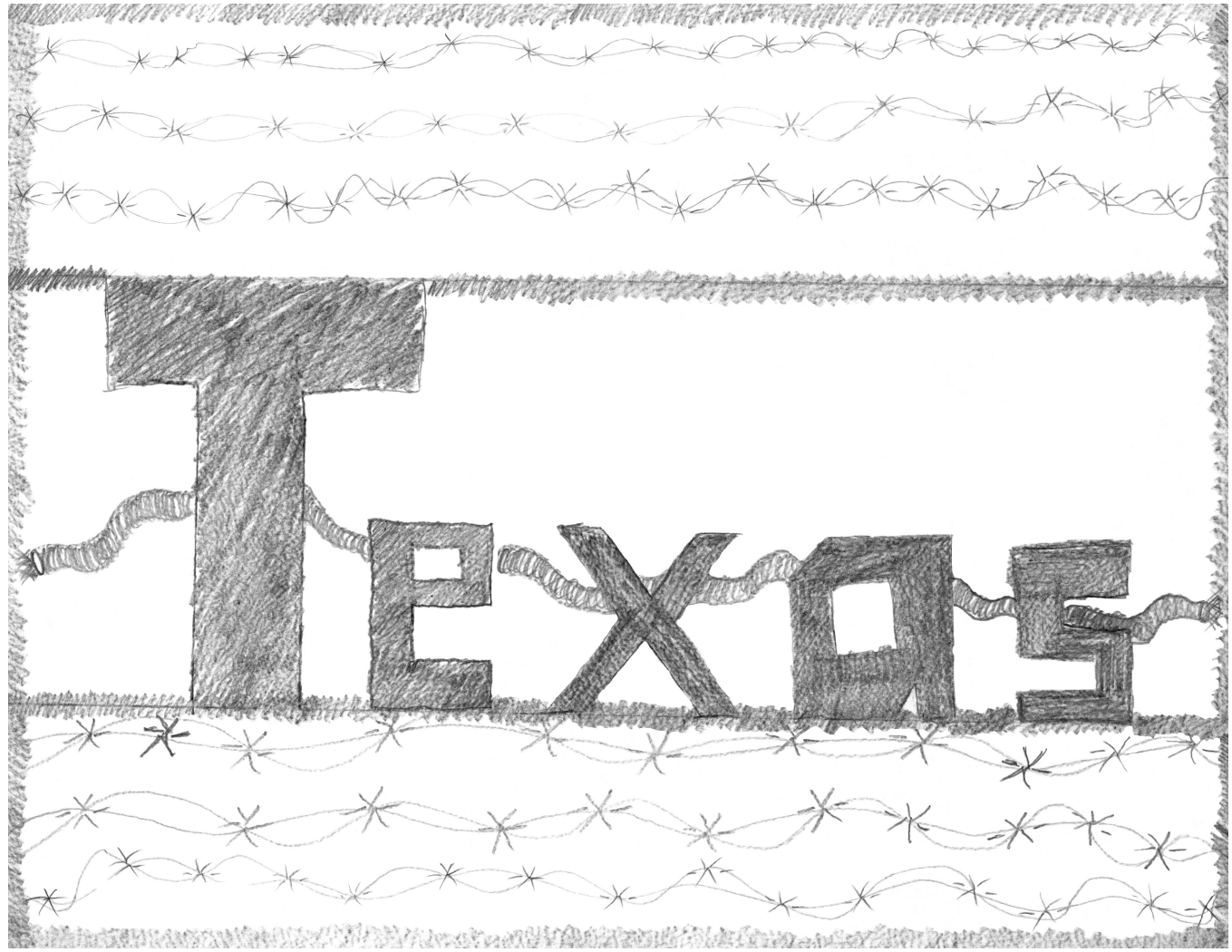
TEXAS

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas 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 35, Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions.

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 35 continue to exist.

Comments regarding suggested changes to the rules in Chapter 35 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 35. 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 2019-070-035-LS. Comments must be received by May 13, 2019. For further information, please contact Kathy Humphreys, Environmental Law Division at (512) 239-3417.

TRD-201900982
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Filed: April 2, 2019

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants.

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 113 continue to exist.

Comments regarding suggested changes to the rules in Chapter 113 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 113. Written comments may be submitted to Ms. Kris Hogan, 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 2019-073-113-AI. Comments must be received by May 13, 2019. For further information, please contact Sherry Davis, Air Permits Division, at (512) 239-2141.

TRD-201900986
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 2, 2019

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

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 301 continue to exist.

Comments regarding suggested changes to the rules in Chapter 301 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 301. 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 2019-056-301-OW. Comments must be received by June 13, 2019. For further information, please contact Chris Ulmann, Water Supply Division, at (512) 239-0418.

TRD-201900983
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 2, 2019

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 324, Used Oil Standards.

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 324 continue to exist.

Comments regarding suggested changes to the rules in Chapter 324 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 324. Written comments may be submitted to Ms. Kris Hogan, 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 2019-076-324-WS. Comments must be received by May 13, 2019. For further information, please contact Shea Backus, Permitting and Registration Division at (512) 239-6966.

TRD-201900987
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 2, 2019

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Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 9, Training, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6851).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 9 are required because the rules provide the procedures regarding training TCEQ Commissioners, as well as, the general procedures and policies concerning training and education of state administrators and employees.

The rules are necessary to ensure the agency complies with the Texas Water Code, Chapter 5, Required Training Program for Commission Members; and the Texas Government Code, Chapter 656, State Employees Training Act. In addition, Texas Government Code, §656.048, requires adopting rules related to the eligibility of the commission's administrators and employees for training and education, the obligations assumed by the administrators and employees receiving the training or education, and the approval process for tuition reimbursement.

Public Comment

The public comment period closed on November 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 9 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201900955
David Timberger
Director, General Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6851).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 91 are required because the rules implement House Bill 2201, 79th Texas Legislature (2005), codified in part as new Texas Health and Safety Code, §382.0565 and Texas Water Code, §5.558. Chapter 91 implements reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile. This chapter provides the commission the opportunity to use public meetings, informal conferences, or advisory committees to gather input of interested persons on an application subject to Chapter 91 when there is a significant degree of public interest. The permit processes authorized under this chapter are not subject to the requirements relating to a contested case hearing.

Public Comment

The public comment period closed on November 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 91 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201900958

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6852).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 217 are required because the rules provide design standards for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of domestic wastewater. The rules also provide the standards that the commission uses in its review and approval of design plans and specifications. The rules are necessary to ensure that domestic wastewater systems are designed and operated to be protective of human health and the environment.

Public Comment

The public comment period closed on November 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 217 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201900960
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 317, Design Criteria Prior to 2008, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6852).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 317 are required because the rules provide design standards that the commission used prior to 2008 for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastewater. The rules also provide the standards that the commission used in its review and approval of design plans and specifications prior to 2008. The rules are necessary to ensure that facilities whose design plans and specifications were approved prior to 2008 are operating and maintaining the facility in compliance with the rules under which the design plans and specifications were approved.

Public Comment

The public comment period closed on November 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 317 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201900961
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rules Review of 30 TAC Chapter 337, Dry Cleaner Environmental Response, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6852).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons continue to exist. The rules in Chapter 337 are required because Texas Health and Safety Code, Chapter 374 requires the agency to adopt rules necessary to administer and enforce that chapter to ensure protection of the environment and to provide for corrective action of releases from dry cleaning facilities.

The rules establish registration requirements for dry cleaning facilities, drop stations, and solvent distributors; set performance standards for dry cleaning facilities; provide for the use of risk-based corrective action to address releases from dry cleaning facilities; and establish the criteria under which the agency may determine that corrective action is considered complete.

Public Comment

The public comment period closed on November 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 337 continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201900959
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §213.33(b)

Texas Board of Nursing Disciplinary Matrix

In determining the appropriate disciplinary action, including the amount of any administrative fine/penalty to assess, the Board will consider the threat to public safety, the seriousness of the violation, and any aggravating or mitigating factors. The Board currently lists factors to be considered in Rule 213.33(c), published at 22 Tex. Admin. Code §213.33. The Matrix lists additional aggravating or mitigating factors that should be considered in addition to the factors listed in Rule 213.33. Further, any aggravating or mitigating factors that may exist in a particular matter, but which are not listed in this Matrix or Rule 213.33, may also be considered by the Board, pursuant to the Occupations Code Chapters 53 and 301. If multiple violations of the Nursing Practice Act (NPA) and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH. Further, the Board and SOAH must consider the requirements of Tex. Occ. Code §301.4531 in matters involving multiple violations or individuals with prior discipline.

The Board may assess administrative fines/penalties as outlined in 22 Tex. Admin. Code §213.32.

Further, although also not addressed by this Matrix, the Occupations Code §301.4521 authorizes the Board to require an individual to submit to an evaluation if the Board has probable cause to believe that the individual is unable to safely practice nursing due to physical impairment, mental impairment, chemical dependency/substance use disorder, or abuse/misuse of drugs or alcohol. Section 301.4521 also authorizes the Board to request an individual to submit to an evaluation for other reasons, such as reported unprofessional conduct, lack of good professional character, or prior criminal history. The Board's rules regarding evaluations are published at 22 Tex. Admin. Code §213.33.

This Matrix also applies to the determination of an individual's eligibility for licensure.

§301.452(b)(1) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301;		
First Tier Offense: Isolated failure to comply with procedural Board rule, such as failure to renew license within six (6) months of its due date/renewal date or failure to complete continuing competency requirements*. Failure to comply with a technical, non-remedial requirement in a prior Board order or stipulation, such as failure to timely pay fine, failure to timely complete remedial education stipulation, missed employer reports, or employer notification forms.	Sanction Level I: Remedial Education, with or without a fine of $250.00 or more for each additional violation. If stipulations in prior Board order are still outstanding, full compliance with and continuation of prior Board order and a fine of $250 or more for each additional violation.	Sanction Level II: Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, periodic board review; and/or a fine of $500 or more for each additional violation.
Second Tier Offense: Failure to comply with a substantive requirement in a prior Board order or stipulation. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation. Any violation of Board order that could pose a risk of harm to patients or public. Practice on a delinquent license for over two (2) years, but less than four (4) years.	Sanction Level I: Requirement to complete conditions of original Board order and a fine of $500.00 or more for each additional violation. Respondent may be subject to next higher sanction and an extension of the stipulations. Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction (ex: a violation of a Board approved Peer Assistance Order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years).	Sanction Level II: Denial of Licensure, Suspension, Revocation, or Voluntary Surrender.

Third Tier Offense: Violation of substantive probationary restriction required in a Board Order that limits the practice setting or scope of practice. Failing to comply with substantive probationary restriction required in a Board Order; for example, repeated failure to submit to random drug screens or intentional submission of false or deceptive compliance evidence. Substantive requirements are those stipulations in a Board Order designed to remediate, verify, or monitor the competency issue raised by the documented violation.	Sanction Level I: Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(1)**: Multiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability, impairment at time of incident, failure to cooperate with compliance investigator.		
Mitigating Circumstances for **§301.452(b)(1)**: Unforeseen financial or health issues; not practicing nursing during stipulation period.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

§301.452(b)(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;		
First Tier Offense: Failure to honestly and accurately provide information that may have affected the Board determination of whether to grant a license. *	Sanction Level I: Remedial Education and/or a fine of $250 or more for each additional violation.	Sanction Level II: Denial of Licensure or Revocation of nursing license.

Second Tier Offense: Intentional misrepresentation of previous nurse licensure, education, extensive criminal history, multiple violations/offenses, an offense which is listed in the Occupations Code §301.4535, or professional character, including when license has been or is requested to be issued based on fraudulent diploma or fraudulent educational transcript.	Sanction Level I: Denial of Licensure or Revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(2):** Multiple offenses; the relevance or seriousness of the hidden information, whether the hidden information, if known, would have prevented licensure.		
Mitigating Circumstances for **§301.452(b)(2):**Seriousness of the hidden violation; age of applicant at time applicant committed violation; and applicant's justified reliance upon advice of legal counsel.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

§301.452(b)(3) a conviction for, or placement on deferred adjudication, community supervision, or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code 213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

Eligibility and Discipline will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct published at http://www.bon.texas.gov/disciplinaryaction/discp-guide.html. The Board will also utilize 22 Tex. Admin. Code §213.28, the Occupations Code §301.4535, and the Occupations Code Chapter 53, including §53.021(b), which provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§301.452(b)(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

	Sanction: Issuance of Cease and Desist Order with referral of all information to local law enforcement.	

301.452(b)(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

	Sanction: **Revocation** of license for this offense.	

§301.452(b)(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;		
First Tier Offense: Negligently or Recklessly aiding an unlicensed person in connection with unauthorized practice. For example, failing to verify credentials of those who are supervised by the nurse* or allowing Certified Nurse Aids to administer medications or otherwise practice beyond their appropriate scope.	Sanction Level I: Remedial Education and/or a fine of $250 for a single or isolated incident. When there exists chronic violations or multiple violations then Warning or Reprimand with Stipulations that may include remedial education; supervised practice; limit specific nursing activities; periodic board review; and/or a fine of $250 or more for each additional violation.	Sanction Level II: Denial of Licensure, Revocation or Voluntary Surrender when omission or violation is associated with high risk of patient injury or death.
Second Tier Offense: Knowingly aiding an unlicensed person in connection with unauthorized practice of nursing.	Sanction Level I: Denial of Licensure, Revocation or Voluntary Surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.
Aggravating Circumstances of **§301.452(b)(7)**: Multiple offenses, intentional violation of institutional and BON rules, patient harm or risk of harm.		
Mitigating Circumstances of **§301.452(b)(7)**: The existence of institutional policies that allow certain practices by unlicensed persons with certified competency.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

§301.452(b)(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;		
First Tier Offense: Action in another jurisdiction results from a default order issued due to the nurse's failure to answer violations, and the violations are not those in which the other jurisdiction or Texas would have revoked the license but for the nurse's failure to respond. Action in another jurisdiction is based on alcohol or substance misuse and the nurse is otherwise eligible for a stipulation of the license based on Board's rules and alcohol or substance misuse policy. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level I: Warning or Reprimand with Stipulations, which may include remedial education; supervised practice; perform public service; verified abstinence from unauthorized use of drugs and alcohol to be verified through urinalysis; limit specific nursing activities; and/or periodic board review. Order to participate in Board approved peer assistance program. Action should be at least consistent with action from other jurisdiction.	Sanction Level II: Revocation, Suspension, or Denial of Licensure when the individual doesn't respond or is not eligible for stipulated license. Action should be at least consistent with action from other jurisdiction.
Second Tier Offense: Revocation in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas.	Sanction Level I: Revocation, denial of licensure, or voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(8)**: Multiple offenses, patient vulnerability, impairment during the incident, the nature and seriousness of the violation in the other jurisdiction, and patient harm or risk of harm associated with the violation, criminal conduct.		

Mitigating Circumstances for **§301.452(b)(8)**: Nurse's failure to defend against the notice of violations and the resulting default order was not result of conscious indifference. The nurse has a meritorious defense against the unanswered violations outlined in the default order.

§301.452(b)(9) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient;		
First Tier Offense: Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	Sanction Level I: Referral to a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level II: For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic board review. Appropriate when individual declines participation in peer assistance program or are otherwise ineligible for the program.

Second Tier Offense: Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. However, individual has a previous history of peer assistance program participation or previous Board order.	Sanction Level I: Board ordered participation in a Board approved peer assistance program for nurses pursuant to Board rules and policy on alcohol or substance abuse or misuse. Includes individuals with non disciplinary history of peer assistance participation. http://www.bon.state.tx.us/disciplinaryaction/dsp.html. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Reprimand with Stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review.	Sanction Level II: Suspension of License until treatment and verifiable proof of at least one year sobriety; thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Includes individuals with prior disciplinary history with peer assistance participation. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Third Tier Offense: Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	Sanction Level I: Referral to a Board approved peer assistance program if no actual patient harm, no previous history of drug or alcohol misuse, and no other aggravating circumstances. Board ordered participation in an approved peer assistance program if no actual patient harm and no other aggravating circumstances. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Warning or Reprimand with Stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Denial of Licensure until applicant establishes he/she has received treatment and demonstrates one (1) year of verifiable sobriety, then license with stipulations that include supervision; limited practice; abstention from drugs/alcohol; and random drug testing through urinalysis.	Sanction Level II: Suspension of License until treatment, verifiable proof of at least one year sobriety, thereafter a stay of suspension with stipulations that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities; and/or periodic board review. For individuals receiving a diagnosis of no chemical dependency and/or no substance abuse/misuse, Suspension of License, which shall be probated, and stipulations which may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities, and/or periodic board review. Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.

Fourth Tier Offense:	Sanction Level I:	Sanction Level II:
Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death.	Denial of Licensure, Revocation or Voluntary Surrender.	Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(9)**: Actual harm; severity of harm; number of events; illegal substance; criminal action; criminal conduct or criminal action involved, criminal justice probation; inappropriate use of prescription drug; unsuccessful / repeated treatment; concurrent diversion violations. Ineligible to participate in approved peer assistance program because of program policy or Board policy.		
Mitigating Circumstances for **§301.452(b)(9)**: Self-remediation, including participation in inpatient treatment, intensive outpatient treatment, and after care program. Verifiable proof of sobriety by random, frequent drug/alcohol screens.		

§301.452(b)(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;		
First Tier Offense:	Sanction Level I:	Sanction Level II:
Isolated failure to comply with Board rules regarding unprofessional conduct resulting in unsafe practice with no adverse patient effects. Isolated violation involving minor unethical conduct where no patient safety is at risk, such as negligent failure to maintain client confidentiality or failure to honestly disclose or answer questions relevant to employment or licensure.*	Remedial Education and/or a fine of $250 or more for each additional violation. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional.	Warning with Stipulations that may include remedial education; supervised practice; perform public service; limit specific nursing activities; and/or periodic Board review; and/or a fine of $500 or more for each additional violation. Additionally, if the isolated violations are associated with mishandling or misdocumenting of controlled substances (with no evidence of impairment) then stipulations may include random drug screens to be verified through urinalysis and practice limitations.

Second Tier Offense: Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious risk to patient or public safety. Repeated acts of unethical behavior or unethical behavior which places patient or public at risk of harm. Personal relationship that violates professional boundaries of nurse/patient relationship.	Sanction Level I: Warning or Reprimand with Stipulations which may include remedial education, supervised practice, and/or perform public service. Fine of $250 or more for each violation. If violation involves mishandling or misdocumenting of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing through urinalysis, limit specific nursing activities, and/or periodic Board review. Board will use its rules and disciplinary sanction polices related to drug or alcohol misuse in analyzing facts. http://www.bon.state.tx.us/disciplinaryaction/dsp.html.	Sanction Level II: Denial of Licensure, Suspension, or Revocation of Licensure. Any Suspension would be enforced at a minimum until nurse pays fine, completes remedial education and presents other rehabilitative efforts as prescribed by the Board. If violation involves mishandling of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances then suspension will be enforced until individual has completed treatment and one year verifiable sobriety before suspension is stayed, thereafter the stipulations will also include abstention from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review. Probated suspension will be for a minimum of two (2) or three (3) years with Board monitored and supervised practice depending on applicable Board policy. Financial exploitation of a patient or public will require full restitution before nurse is eligible for unencumbered license.

Third Tier Offense: Failure to comply with a substantive Board rule regarding unprofessional conduct resulting in serious patient harm. Repeated acts of unethical behavior or unethical behavior which results in harm to the patient or public. Sexual or sexualized contact with patient. Physical abuse of patient. Financial exploitation or unethical conduct resulting in a material or financial loss to a patient of public in excess of $4,999.99.	Sanction Level I: Denial of licensure or revocation of nursing license. Nurse or individual is not subject to licensure or reinstatement of licensure until restitution is paid.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(10)**: Number of events, level of material or financial gain, actual harm, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications, criminal conduct.		
Mitigating Circumstances for **§301.452(b)(10)**: Voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency, full restitution paid.		
* Denotes a violation that is subject to disciplinary action, but may be eligible for a corrective action agreement (non-disciplinary action). The sanctions contained in this Matrix are disciplinary actions. Board rules regarding corrective actions (non-disciplinary actions) are located at 22 Tex. Admin. Code §213.32 and are not applicable to this Matrix. Further, a corrective action is not available as a sanction in a disciplinary action.		

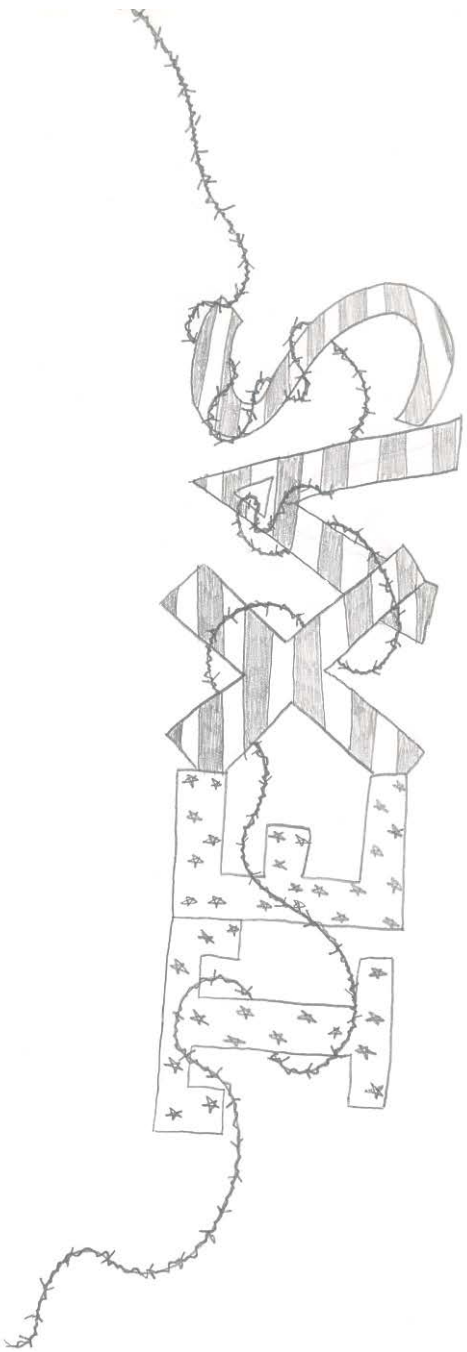
§301.452(b)(11) adjudication of mental incompetency;		
	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455, which may ultimately result in revocation.

§301.452(b)(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or		
First Tier Violation: A physical condition or diagnosis of schizophrenia and or other psychotic disorder, bi-polar disorder, paranoid personality disorder, anti-social personality disorder, and/or borderline personality disorder without patient involvement or harm; but less than two years of compliance with treatment and less than two years of verifiable evidence of competent functioning.	Sanction Level I: Referral to the Board approved Peer Assistance Program or Warning with Stipulations for a minimum of one (1) year to include therapy and appropriate treatment and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.
Second Tier Violation: Lack of fitness based on any mental health or physical health condition with potential harm or adverse patient effects or other serious practice violations. "Lack of fitness" includes observed behavior that includes, but is not limited to: slurred speech, unsteady gait, sleeping on duty, inability to focus or answer questions appropriately.	Sanction Level I: With evidence of drug or alcohol misuse: Refer to Sanctions in §301.452(b)(9). Warning or Reprimand with Stipulations for a minimum of one (1) year to include supervision, therapy, and monitored practice that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic Board review.	Sanction Level II: With evidence of drug or alcohol misuse: Refer to Sanctions in 301.452(b)(9). Denial of license or Suspension of license until individual is able to provide evidence of competency, then probation that may include remedial education; supervised practice; perform public service; abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis; limit specific nursing activities and/or periodic Board review.

Third Tier Violation: Lack of fitness based on any mental health or physical health condition with evidence of patient harm, significant risk of harm, or other serious practice violations.	Sanction Level I: Denial of licensure or revocation of nursing license.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances of **§301.452(b)(12)**: Seriousness of mental health diagnosis, multiple diagnosis, recent psychotic episodes, lack of successful treatment or remediation, number of events or hospitalization, actual harm, severity of harm, prior complaints or discipline for similar conduct.		
Mitigating Circumstances of **§301.452(b)(12)**: Self report, length of time since condition was relevant, successful response to treatment, positive psychological/chemical dependancy evaluation from a board approved evaluator who has opportunity to review the Board's file.		

§301.452(b)(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.		
First Tier Offense: Practice below standard with a low risk of patient harm.	Sanction Level I: Remedial Education and/or fine of $250 when there is isolated incident or a fine of more than $250 for each additional violation.	Sanction Level II: Warning or Reprimand with Stipulations that may include remedial education, supervised practice, perform public service, abstain from unauthorized use of drugs and alcohol to be verified by random drug testing through urinalysis, limit specific nursing activities and/or periodic board review and/or fine of $500 or more for each additional violation.

Second Tier Offense: Practice below standard with patient harm or risk of patient harm.	Sanction Level I: Warning or Reprimand with Stipulations that may include supervised practice, limited specific nursing activities and/or periodic board review and/or a fine of $500 or more for each additional violation.	Sanction Level II: Denial, suspension of license, revocation of license, or request for voluntary surrender.
Third Tier Offense: Practice below standard with a serious risk of harm or death that is known or should be known. Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency. In addition, any intentional act or omission that risks or results in serious harm.	Sanction Level I: Denial, suspension of license; revocation of license or request for voluntary surrender.	Sanction Level II: Emergency Suspension of nursing practice in light of violation that may be a continuing and imminent threat to public health and safety pursuant to the Occupations Code §301.455 or §301.4551, which may ultimately result in revocation.
Aggravating Circumstances for **§301.452(b)(13)**: Number of events, actual harm, impairment at time of incident, severity of harm, prior complaints or discipline for similar conduct, patient vulnerability, failure to demonstrate competent nursing practice consistently during nursing career.		
Mitigating Circumstances for **§301.452(b)(13)**: Outcome not a result of care, participation in established or approved remediation or rehabilitation program and demonstrated competency, systems issues.		



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.

Coastal Bend Workforce Development Board

Request for Proposals for Management and Operations of the Career Center System

Using the Request for Proposals (RFP) method of procurement, the Coastal Bend Workforce Development Board, d.b.a. Workforce Solutions of the Coastal Bend (WFSCB) is soliciting responses from qualified individuals or firms for the Management and Operations of the Workforce Solutions Career Center System for Fiscal Year 2019-20. The Coastal Bend region consists of the following 11 counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, Refugio, and San Patricio.

The Workforce Services Delivery System incorporates at a minimum, general workforce information and referral; customer, employer, and job seeker services; customer intake, program eligibility and assessment; case management; enrollment into education and training programs; job placement; career counseling; support services; follow-up and retention services as funded by the Workforce Innovation and Opportunity Act (WIOA: Youth. Adult, and, Dislocated Worker), Temporary Assistance to Needy Families (TANF)/Choices, Supplemental Nutrition Assistance Program (SNAP), Employment and Training, and Wagner-Peyser for the 11-county Coastal Bend area.

A Pre-Proposal Conference will be held on Thursday, April 11, 2019, 10:00 a.m. (CST). The purpose of the Pre-Proposal Conference is to explain or clarify this RFP and answer other questions. The meeting will be held at the Staples Workforce Center, 520 North Staples Street, Corpus Christi, TX 78401.

Attendance at this conference is not mandatory, but it is strongly recommended. For those individuals that are unable to attend the conference, you may participate via tele-conference. To register for the tele-conference, go to: **https://global.gotomeeting/join/257358261.** To listen to the presentation and ask questions, dial in using your phone at: (571) 317-3112, Access Code: 257-358-261.

Copies of the RFP will be available on Tuesday, April 2, 2019. Interested parties can access a copy of the RFP on-line at **www.workforcesolutionscb.org** or by contacting Robert Ramirez at (361) 885-3013 or **robert.ramirez@workforcesolutionscb.org.**

The RFP process consists of the submission of an application and a proposal. **The deadline for receipt of Applications is May 23, 2019, 4:00 p.m. (CST) and Proposals is June 27, 2019, 4:00 p.m. (CST).**

Workforce Solutions of the Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aid and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing or speech impaired customers may contact Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 7-1-1 (voice). Historically Underutilized Businesses (HUB's) are encouraged to apply.

Babel Notice: This document contains vital information about requirements, rights, determinations, and/or responsibilities for accessing workforce system services. Language services, including the interpretation/translation of this document, are available free of charge upon request.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-201900947
Amy Kiddy Villarreal
Deputy Executive Director
Coastal Bend Workforce Development Board
Filed: March 28, 2019

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

Notice of Award: The Texas Comptroller of Public Accounts, on behalf of the Texas Treasury Safekeeping Trust Company, announces the award of an investment consulting services contract under Request for Proposals No. 220a ("RFP") to Aksia LLC, 599 Lexington Avenue, 37th Floor, New York, New York 10022. The total amount of the contract is not to exceed $700,000.00 per annum. The term of the contract is March 29, 2019, through December 31, 2019, with option to renew for three (3) additional one (1) year periods.

The RFP was published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5693).

TRD-201900991
Cindy Stapper
Contracts Attorney
Comptroller of Public Accounts
Filed: April 3, 2019

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Notice of Request for Qualifications

Notice of Request for Qualifications: Pursuant to Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Qualifications No. 223b ("RFQ") from qualified independent persons or firms to perform tax compliance examination services that meet the requirements of Section 111.0045 of the Texas Tax Code, administrative rules as codified at 34 Texas Administrative Code §3.3, procedures established by Comptroller under that statute, and other applicable law. For clarification, such services do not include any attestation services or rendition of an opinion of any nature by any such contractors. Under this RFQ, Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. The successful respondent(s) will be expected to begin performance of the contract on or after September 1, 2019.

Contact: Parties interested in a hard copy of the RFQ should contact Cindy Stapper, Contracts Attorney, Texas Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673. The RFQ will be available electronically on the *Electronic State Business Daily* ("ESBD") at:

http://www.txsmartbuy.com/sp on Friday, April 12, 2019, after 10:00 a.m., Central Time (CT). The times stated in this notice refer to Central Time, Austin, Texas.

Questions: All written questions must be received at the above-referenced address not later than 2:00 p.m. CT on Friday, April 26, 2019. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. **Respondents are solely responsible for verifying timely receipt of questions in the Issuing Office. Late questions will not be considered under any circumstances.** On or about Friday, May 3, 2019, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFQ.

Closing Date: Statement of Qualifications must be delivered to the Issuing Office no later than **2:00 p.m. CT, Friday, May 31, 2019. Statement of Qualifications received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Statement of Qualifications in the Issuing Office.**

Evaluation Criteria: The Statement of Qualifications will be evaluated under the evaluation criteria outlined in the RFQ. Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. Comptroller shall not pay for any costs incurred by any party or entity in responding to this notice or the RFQ.

The anticipated schedule of events is as follows: Issuance of RFQ--April 12, 2019, after 10:00 a.m. CT; Questions Due--April 26, 2019, 2:00 p.m. CT; Official Responses to Questions posted--May 3, 2019, or as soon thereafter as practical; Statement of Qualifications Due--**May 31, 2019, 2:00 p.m. CT,** Contract Execution--August 16, 2019, or as soon thereafter as practical; and Commencement of Work--on or after September 1, 2019. Any changes to this solicitation will be posted on the ESBD as a RFQ Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFQ prior to submitting a Statement of Qualifications.

TRD-201900996
Cindy Stapper
Contracts Attorney
Comptroller of Public Accounts
Filed: April 3, 2019

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/08/19 - 04/14/19 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 04/08/19 - 04/14/19 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 04/01/19 - 04/30/19 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 04/01/19 - 04/30/19 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-201900985
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 2, 2019

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 13, 2019.** 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 **May 13, 2019.** 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: 114th Mobile Home Park, LLC; DOCKET NUMBER: 2018-1709-PWS-E; IDENTIFIER: RN102318094; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the maximum containment level for fluoride for the second quarter of 2018; PENALTY: $54; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: AMISTAD LAGO VILLA HOMEOWNER'S ASSOCIATION, INCORPORATED; DOCKET NUMBER: 2018-1382-PWS-E; IDENTIFIER: RN104711247; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2), by failing to collect one lead and copper sample from the facility's

entry point no later than 180 days following the end of the January 1, 2017 - December 31, 2017, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the June 1, 2017 - November 30, 2017, monitoring period; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2017 - December 31, 2017, monitoring period during which the lead action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days following the end of the January 1, 2017 - December 31, 2017, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: $549; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-4728; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Apache Corporation; DOCKET NUMBER: 2018-1746-AIR-E; IDENTIFIER: RN107225161; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: natural gas processing site; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 119223, and Texas Health and Safety Code, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2018-1728-PWS-E; IDENTIFIER: RN101217826; LOCATION: London, Kimble County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity based on the running annual average; PENALTY: $345; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Bartlett Cocke General Contractors, LLC; DOCKET NUMBER: 2019-0174-WQ-E; IDENTIFIER: RN109812735; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: $4,688; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Casita Enterprises, Incorporated; DOCKET NUMBER: 2018-1203-AIR-E; IDENTIFIER: RN100215664; LOCATION: Rice, Navarro County; TYPE OF FACILITY: travel trailer and camper manufacturing site; RULES VIOLATED: 30 TAC §§101.20(2), 113.960, and 122.143(4), 40 Code of Federal Regulations §63.3890(b)(1), Federal Operating Permit (FOP) Number O1802, General Terms and Conditions (GTC) and Special Terms and Conditions Number 4, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the organic hazardous air pollutants emissions limit for existing general use coatings; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1802, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1802, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: $88,420; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $35,368; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Douglassville; DOCKET NUMBER: 2018-1156-PWS-E; IDENTIFIER: RN101388437; LOCATION: Douglassville, Cass County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(6), by failing to provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point; 30 TAC §290.43(c)(2), by failing to ensure that the facility's ground storage tank roof hatches remain locked except during inspections and maintenance; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(l), by failing to flush all dead-end mains more often than monthly intervals if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $325; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Grapevine; DOCKET NUMBER: 2019-0085-MWD-E; IDENTIFIER: RN101614352; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1) and (c), and Texas Pollutant Discharge Elimination System Permit Number WQ0010486002, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Horseshoe Bay; DOCKET NUMBER: 2018-1529-MWD-E; IDENTIFIER: RN101189801; LOCATION: Horseshoe Bay, Llano County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ Permit Number WQ0011217001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,500; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: City of Huntington; DOCKET NUMBER: 2018-1034-MWD-E; IDENTIFIER: RN102184355; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.42(a) and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas

Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010191001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010191001, Permit Conditions Number 2.d and Operational Requirements Number 1, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010191001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §§305.125(1) and (5), 317.3(e)(5), and 317.4(b)(4) and TPDES Permit Number WQ0010191001, Operational Requirements Numbers 1 and 4, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010191001, Monitoring and Reporting Requirements Number 7(c), by failing to report any effluent violation which deviates from the permitted effluent limitations by more that 40% in writing to the TCEQ Beaumont Regional Office and Enforcement Division within five working days of becoming aware of the non-compliance; 30 TAC §§305.125(1) and (11)(A), 319.1, 319.4, and 319.5(b) and TPDES Permit Number WQ0010191001, Interim Effluent Limitations and Monitoring Requirements Number 1 and Monitoring and Reporting Requirements Numbers 1 and 3(a), by failing to collect and analyze effluent samples at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010191001, Sludge Provisions, by failing to submit the annual sludge reports to the TCEQ Beaumont Regional Office and Enforcement Division by September 30th of each year; and 30 TAC §317.4(a)(8), by failing to annually test the reduced-pressure backflow assembly; PENALTY: $49,488; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $39,591; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2018-0175-AIR-E; IDENTIFIER: RN107089328; LOCATION: Forsan, Howard County; TYPE OF FACILITY: acid gas separation and injection plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification within 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(G) and (H) and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of an emissions event; and 30 TAC §106.6(b), Permit by Rule Registration Number 116559, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $120,014; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $60,007; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: DANNY FOIX' #3, LLC; DOCKET NUMBER: 2019-0062-PST-E; IDENTIFIER: RN102040359; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,662; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: GREYHOUND LINES, INCORPORATED dba Greyhound Bus Terminal; DOCKET NUMBER: 2019-0098-PST-E; IDENTIFIER: RN101764785; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Herman Granger dba Granger Utilities and Angela Granger dba Granger Utilities; DOCKET NUMBER: 2018-0949-PWS-E; IDENTIFIER: RN104375126; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(1), by failing to adopt and submit to the executive director (ED) for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O), by failing to protect all completed well units by an intruder-resistant fence or enclosed in a locked, ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; 30 TAC §290.42(j), by failing to use all chemicals and any additional or replacement process media for treatment of water supplied by the facility that conforms to the American National Standards Institute/National Sanitation Foundation standards; 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 §290.43(d)(3), by failing to provide a device to readily determine the air-water-volume for the pressure tank; 30 TAC §290.43(e), by failing to ensure that the facility's potable water storage tanks and pressure maintenance facilities are installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator with a Class D or higher license for a groundwater system serving no more than 250 connections; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(V), (iii), (iv), (v), and (vi), (B)(iii), (D)(ii), and (E)(iv), by failing to maintain water works operation and maintenance records and make them available for review to the ED during the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(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; 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(s), by failing to use accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.118(a) and (b), by failing to

meet the maximum secondary constituent level for manganese of 0.5 milligrams per liter or receive a written approval from the ED to use the water source for public drinking water; 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 public water system will use to comply with the monitoring requirements; PENALTY: $1,841; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: HK MIAN BUSINESS, INCORPORATED dba El Dorado Food Mart; DOCKET NUMBER: 2018-1679-PST-E; IDENTIFIER: RN102906625; LOCATION: Webster, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST system for releases at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: $15,325; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2018-1504-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 1303, Special Conditions Number 1, Federal Operating Permit Number O1898, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: KD Consolidated Investments, L.L.C.; DOCKET NUMBER: 2016-1580-AIR-E; IDENTIFIER: RN104247226; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Kendrick Oil Co. dba Fast Stop 27; DOCKET NUMBER: 2019-0239-PST-E; IDENTIFIER: RN101839785; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a underground storage tank (UST) system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $4,601; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: Metroplex Sand & Gravel, Ltd.; DOCKET NUMBER: 2016-1579-AIR-E; IDENTIFIER: RN104594510; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: NAMELESS HOLLOW COUNCIL OF CO-OWNERS; DOCKET NUMBER: 2018-0476-MLM-E; IDENTIFIER: RN101191039; LOCATION: Leander, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; and 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; PENALTY: $390; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-4728; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(21) COMPANY: Neil Proulx; DOCKET NUMBER: 2019-0170-MLM-E; IDENTIFIER: RN110452968; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized collection, storage, processing, or disposal of MSW; PENALTY: $2,726; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: ONE 11 INVESTMENT, LLC dba Yellowstone Mart; DOCKET NUMBER: 2018-1725-PST-E; IDENTIFIER: RN101943140; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(c), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,605; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Pleasanton Stop, Incorporated; DOCKET NUMBER: 2019-0036-PST-E; IDENTIFIER: RN101725695; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every 30 days and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,687; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Rio Water Supply Corporation; DOCKET NUMBER: 2018-1432-PWS-E; IDENTIFIER: RN101456689; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(e)(3), by failing to locate the raw water pump station in a well-drained area and design the raw water pump station to remain in operation during flood events; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator

that meets Occupational Safety and Health Administration standards for construction and operation and is readily accessible outside the chlorination room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation, which includes high level and floor level screened vents, for all enclosures in which gas chlorine is being stored or fed; 30 TAC §290.45(b)(2)(C) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a transfer pump capacity of 0.6 gallons per minute per connection with the largest pump out of service; 30 TAC §290.45(b)(2)(G) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 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; 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 public water system will use to comply with the monitoring requirements; PENALTY: $8,086; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: Royal Crest Custom Homes Ltd; DOCKET NUMBER: 2019-0296-WQ-E; IDENTIFIER: RN110521283; LOCATION: Justin, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Epifanio Villareal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Saul Flores; DOCKET NUMBER: 2018-1704-PST-E; IDENTIFIER: RN110538840; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to not deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,227; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (254) 761-3036; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(27) COMPANY: SI Group, Incorporated; DOCKET NUMBER: 2018-1474-AIR-E; IDENTIFIER: RN100218999; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 2341, Special Conditions Number 4.D, Federal Operating Permit Number O1431, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum percent by volume fuel gas mixture for combustion for the flare; PENALTY: $13,800; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: SIMPLY AQUATICS, INCORPORATED; DOCKET NUMBER: 2018-1595-PWS-E; IDENTIFIER: RN102675303; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f), and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for TTHM based on the locational running average for the second quarter of 2018 for Stage 2 Disinfection Byproducts at Site 1; PENALTY: $198; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: TPC Group LLC; DOCKET NUMBER: 2018-1097-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number O1327, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify the estimated total quantities for those compounds or mixtures to have been released during the emissions event on the final record for a reportable emissions event; 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20485, Special Conditions Number 1, FOP Number O1327, GTC and STC Number 20, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1327, GTC and STC Number 24, and THSC, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $55,753; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,301; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(30) COMPANY: Western Dairy Transport, L.L.C.; DOCKET NUMBER: 2018-1427-AIR-E; IDENTIFIER: RN105139372; LOCATION: Dublin, Erath County; TYPE OF FACILITY: dairy product transportation service; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $1,562; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201900981
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 2, 2019

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Notice of Correction to Default Order Number 5

In the March 22, 2019, issue of the *Texas Register* (44 TexReg 1547), the Texas Commission on Environmental Quality (commission) published notice of a Default Order, specifically Item Number 5, for Ron C. King dba Anchor Road Mobile Home Park. The error is as submitted by the commission.

The reference to one of the RULES VIOLATED should be corrected to read: "30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the notification regarding the failure to provide the results for nitrate and VOC contaminants sampling to the ED, and failing to provide the results for SOC_5 contaminants sampling to the ED";

For questions concerning this error, please contact Logan Harrell at (512) 239-1439.

TRD-201900992

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 3, 2019

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 7

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 7, Memoranda of Understanding, §7.119, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would adopt by reference updates to the commission's memorandum of understanding with the Texas Department of Transportation regarding TCEQ environmental reviews of TxDOT highway (transportation) projects.

The commission will hold a public hearing on this proposal in Austin on May 9, 2019, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-008-007-LS. The comment period closes on May 13, 2019. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Kathy Humphreys, Office of Legal Services, Environmental Law Division, at (512) 239-3417.

TRD-201900963
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 29, 2019

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Texas Facilities Commission

Request for Proposals #303-0-20651

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-0-20651. TFC seeks a five (5) or ten (10) year lease of approximately 2,770 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is April 22, 2019, and the deadline for proposals is May 7, 2019, at 3:00 p.m. The award date is June 20, 2019. 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/303-0-20651.

TRD-201900975
Naomi Gonzalez
Acting General Counsel
Texas Facilities Commission
Filed: April 1, 2019

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 25, 2019, to March 1, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, April 5, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, May 5, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Pelican Asphalt Co. LLC

Location: The project site is located in the Old River (San Jacinto), approximately 17 miles east of Houston, within Harris County, Texas.

Latitude & Longitude (NAD 83): 29.789025, -95.086581

Project Description: The applicant requests to reauthorize an expired permit to dredge 1.98 acres of their private boat slip to a depth of -11.5 plus 1-foot Mean Lower Low Water (MLLW). In 2019, the applicant proposes to dredge 7,050 cubic yards of sediment and maintenance dredge less than 10,000 cubic yards of material over the course of every 5 years. The applicant also requests authorization to add the following private placement areas to their authorization: Avera, Adloy, East and West Jones. This project area is located within the San Jacinto Waste Pits Superfund Site Area of Concern and is being evaluated with consideration to the 21 October 2009 Public Notice.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-1996-02924. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 19-1220-F1

Applicant: Enterprise Products Operating LLC

Location: The project site is located in and adjacent to the Neches River at the Beaumont Marine West (BMW) Terminal, approximately 6.5 miles southeast of Beaumont, within Jefferson County, Texas.

Latitude & Longitude (NAD 83): 30.032042, -94.033757

Project Description: The applicant proposes to consolidate eleven Department of the Army and SWG permits and all previously authorized structures, maintenance dredging, and authorized dredge material placement areas (DPMA) under one permit (SWG-2000-02956). The applicant proposes the following new work: to conduct bank stabilization activities at Barge Dock A (as depicted on pages 1-5 of the attached plans) including the placement of a 370-foot revetment mat which will impact 0.026 acres of wetlands and result in 1.5 cubic yards of fill along the length of the mat. Additionally, the applicant seeks authorization to utilize DPMAs 21, 23, 23A, 24, 24A, 25, 25A, 26, 27A, 27B, 27C, 27D, as well as the Bessie Heights Beneficial Use and Nelda Stark Unit of the Lower Neches Wildlife Management Area for the placement of future excavations.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2000-02956. 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.

CMP Project No: 19-1233-F1

Applicant: Richard Agee

Location: The project site is located in Cold Pass (Christmas Bay) on San Luis Island on the Stephen F. Austin Peninsula League (Abstract 29) on the north side of Highway 257, in Brazoria County, Texas.

Latitude & Longitude (NAD 83): 29.067628, -95.137574

Project Description: The applicant proposes to conduct clearing, excavation, and earthwork to construct a 500-foot-long and 8-foot-wide boardwalk, a boardwalk/dock that is 120-foot-long and ranges from 8- to 20-foot-wide, a 25-foot-long by 25-foot-wide boathouse, and an 800-foot-long bulkhead. Approximately 0.131-acre of wetlands will be filled by approximately 810 cubic yards of fill material to construct the bulkhead structure. The pilings for the boathouse and pier will be installed via a barge and a water jet. The boardwalk will be installed with an auger.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2018-00620. 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: 19-1182-F1

Applicant: Aransas County Navigation District

Location: The project site is located in Little Bay and in Aransas Bay at the Rockport Harbor, in Rockport, Aransas County, Texas.

Latitude & Longitude (NAD 83): 28.019764, -97.049436

Project Description: The applicant proposes to modify their existing permitted breakwater and the associated compensatory mitigation area to address the Corps' determination that the mitigation site failed to meet the yearly and final success criteria specified in the permit. The permit, issued on 22 March 2011, authorized the discharge of fill material into approximately 0.85 acre of waters of the U.S. for the construction of an L-shaped stone/rock breakwater. Mitigation at a 3:1 ratio was required to compensate for 0.044 acre of seagrass impacted by construction of the breakwater. The applicant proposes to address the non-compliance state of their permit by abandoning the existing mitigation site and establishing approximately 0.25 acre of smooth cordgrass emergent marsh on the western shoreline of Little Bay, in accordance with the attached draft compensatory mitigation plan. Additionally, the applicant proposes to further modify their existing permit to construct a new marina facility within the 5-acre site adjacent to the existing breakwater structure. The applicant's stated purpose of the proposed marina facility is to facilitate economic recovery from the effects of Hurricane Harvey in the Rockport area. The applicant proposes to: 1) construct a floating dock marina with 41 permanent slips supported by thirty-nine 50-foot-long and 14-inch-square ground-driven pre-cast concrete pilings; 2) install 810 linear feet of concrete bulkhead along the shoreline; and, 3) construct 810 linear feet of 10-foot-wide boardwalk parallel to the shoreline.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2003-02700. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 19-1250-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Corps of Engineers

Project Description: The United States Army Corps of Engineers (USACE), in cooperation with the Texas Department of Transportation (TxDOT) Maritime Division, is conducting a feasibility study to investigate improvements to the Gulf Intracoastal Waterway (GIWW), Brazos River Floodgates (BRFG) and Colorado River Locks (CRL) facilities that would reduce navigational difficulties, delays, and accidents occurring as tow operators transit the BRFG and CRL structures and across the Brazos and Colorado Rivers.

At the BRFG, the main features of the Recommended Plan are the removal of the existing gates on both sides of the river crossing, the construction of a 125-foot-wide open channel (no gate structure) on the west side of the river, and construction of a new 125-foot-wide sector gate structure on the east side of the river.

At the CRL, the main features of the Recommended Plan are the decommissioning of all four existing gate structures and the construction of a new 125-foot-wide sector gate structure on the east and west sides of the river.

CMP Project No: 19-1232-F2

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-201900997
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: April 3, 2019

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Texas Health and Human Services Commission

Criminal History Requirements for Child Care Operations

Title 40, Texas Administrative Code §745.661 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?) states that the three charts listed in subsection (a) of this section are updated annually and published every January in the *Texas Register* as an "In Addition" document. The three charts are entitled: (1) Licensed or Certified Child Care Operations: Criminal History Requirements; (2) Foster or Adoptive Placements: Criminal History Requirements; and (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements. On February 1, 2019, these three charts, and the proposed changes to these charts, were published

and made available for written public comment. The written public comment period closed on March 3, 2019. No comments were received. As a result, the three Criminal History Requirements charts have been adopted as proposed.

TRD-201900954
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 29, 2019

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) receives funds from the Texas Workforce Commission (TWC) to plan for and ensure the availability of workforce development and child care services within the twenty-six county Panhandle Workforce Development Area (PWDA) and is issuing a Request for Proposals (RFP) to procure a source for website design, development, and construction, for the purpose of building a new website to replace the current website at www.wspanhandle.com, from which Workforce Solutions Panhandle (WSP) will deliver workforce development services in the PWDA.

A copy of the solicitation can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Contracts Coordinator at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on Wednesday, May 8, 2019.

PRPC, as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter network, is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201900993
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: April 3, 2019

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Texas Department of Transportation

Notice of Public Hearing - Austin - Texas Private Activity Bond Surface Transportation Corporation

The Texas Private Activity Bond Surface Transportation Corporation (the "Corporation") or its designated hearing officer will hold a public hearing on April 22, 2019, at 10:30 a.m. at the following location:

Texas Department of Transportation

Dewitt C. Greer Building

125 E. 11th Street

Executive Room 123

Austin, Texas 78701

Among the items to be discussed will be the proposal for the issuance by the Corporation of its senior lien revenue bonds to finance construction, engineering, developer fees, and other related costs of NTE Mobility Partners Segments 3 LLC (the "Developer") to develop, design, construct, manage, operate and maintain the North Tarrant Express Segment 3C Facility as well as certain other works to be implemented via separate change orders in respect of the Facility Agreement, as described below, pursuant to that certain Amended and Restated Facility Agreement North Tarrant Express Segments 3A, 3B and 3C Facility (the "Facility Agreement"), between the Texas Department of Transportation and the Developer. The Developer's design and construction obligations in respect of the Project (as defined below) include: (i) on IH-35W, construction of two managed lanes in each direction spanning approximately 7 miles from north of US 81/287 to Eagle Pkwy ("Segment 3C"), (ii) on IH-820/IH-35W, the construction of two managed lane direct connectors located on the 3A Facility Segment from the IH-820 EB general purpose lanes to the NB IH-35W managed lanes and from the IH-35W SB managed lane to the IH-820 WB general purpose lane (the "IH 820 Direct Connectors," and together with Segment 3C, the "3C Facility Segment") (iii) reconstruction of existing general purpose lanes, two general purpose lanes per direction, and construction of access ramps and frontage roads, (iv) managed lanes and general purpose lane direct connectors from SH-170 WB to IH-35W SB and from IH-35WNB to SH-170 EB, (v) the design, development and installation of the ITS and tolling systems on Segment 3C and the IH 820 Direct Connectors, (vi) implementation of certain utility adjustments, (vii) the construction of Mark IV Parkway improvements and southbound frontage road, (viii) the construction of U-turn bridges at NE 28th Street, North Tarrant Parkway, Heritage Trace and SH 170, (ix) certain corrective work within the North Tarrant Express Segment 3B Facility Segment, and (x) the design and construction of additional non-tolled improvements to the North Tarrant Express Segments 3A, 3B and 3C Facility (collectively, the "Project"). The senior lien revenue bonds will also be used to fund reserves to the extent authorized by state and federal law and to pay certain costs of issuance of the bonds. The Project will be managed and operated by the Developer pursuant to the Facility Agreement. The term of the Facility Agreement is until June 22, 2061, and, pursuant to the terms of the Facility Agreement, the Developer is authorized to toll Segment 3C. North Tarrant Infrastructure, LLC is the Design-Build Contractor for the Project. A map showing the location of the Segment 3C Facility Segment is available online at

http://ftp.dot.state.tx.us/pub/txdot/get-involved/ftw/north-tarrant-express/022819-newsletter.pdf

The maximum aggregate amount of the senior lien revenue bonds to be issued, in one or more series, is $812,100,000. The senior lien revenue bonds and the interest thereon shall be payable solely from funds paid or made available by the Developer and shall never constitute and shall not be considered obligations, general or otherwise, of the State of Texas, the Texas Transportation Commission, or the Texas Department of Transportation, or any other political subdivision thereof. The deadline for receipt of written comments is 10:30 a.m. on April 22, 2019. Comments should be sent to: Texas Private Activity Bond Surface Transportation Corporation, Attention: President, Board of Directors, 125 East 11th Street, Austin, Texas 78701.

TRD-201900998
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 3, 2019

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Notice of Public Hearing - Fort Worth - Texas Private Activity Bond Surface Transportation Corporation

The Texas Private Activity Bond Surface Transportation Corporation (the "Corporation") or its designated hearing officer will hold a public hearing on April 12, 2019, at 10:30 a.m. at the following location:

Texas Department of Transportation

Fort Worth District Office

Regional Training Center

2501 SW Loop 820

Fort Worth, Texas 76133

Among the items to be discussed will be the proposal for the issuance by the Corporation of its senior lien revenue bonds to finance construction, engineering, developer fees, and other related costs of NTE Mobility Partners Segments 3 LLC (the "Developer") to develop, design, construct, manage, operate and maintain the North Tarrant Express Segment 3C Facility as well as certain other works to be implemented via separate change orders in respect of the Facility Agreement, as described below, pursuant to that certain Amended and Restated Facility Agreement North Tarrant Express Segments 3A, 3B and 3C Facility (the "Facility Agreement"), between the Texas Department of Transportation and the Developer. The Developer's design and construction obligations in respect of the Project (as defined below) include: (i) on IH-35W, construction of two managed lanes in each direction spanning approximately 7 miles from north of US 81/287 to Eagle Pkwy ("Segment 3C"), (ii) on IH-820/IH-35W, the construction of two managed lane direct connectors located on the 3A Facility Segment from the IH-820 EB general purpose lanes to the NB IH-35W managed lanes and from the IH-35W SB managed lane to the IH-820 WB general purpose lane (the "IH 820 Direct Connectors," and together with Segment 3C, the "3C Facility Segment") (iii) reconstruction of existing general purpose lanes, two general purpose lanes per direction, and construction of access ramps and frontage roads, (iv) managed lanes and general purpose lane direct connectors from SH-170 WB to IH-35W SB and from IH-35WNB to SH-170 EB, (v) the design, development and installation of the ITS and tolling systems on Segment 3C and the IH 820 Direct Connectors, (vi) implementation of certain utility adjustments, (vii) the construction of Mark IV Parkway improvements and southbound frontage road, (viii) the construction of U-turn bridges at NE 28th Street, North Tarrant Parkway, Heritage Trace and SH 170, (ix) certain corrective work within the North Tarrant Express Segment 3B Facility Segment, and (x) the design and construction of additional non-tolled improvements to the North Tarrant Express Segments 3A, 3B and 3C Facility (collectively, the "Project"). The senior lien revenue bonds will also be used to fund reserves to the extent authorized by state and federal law and to pay certain costs of issuance of the bonds. The Project will be managed and operated by the Developer pursuant to the Facility Agreement. The term of the Facility Agreement is until June 22, 2061, and, pursuant to the terms of the Facility Agreement, the Developer is authorized to toll Segment 3C. North Tarrant Infrastructure, LLC is the Design-Build Contractor for the Project. A map showing the location of the Segment 3C Facility Segment is available online at

http://ftp.dot.state.tx.us/pub/txdot/get-involved/ftw/north-tarrant-express/022819-newsletter.pdf

The maximum aggregate amount of the senior lien revenue bonds to be issued, in one or more series, is $812,100,000. The senior lien revenue bonds and the interest thereon shall be payable solely from funds paid or made available by the Developer and shall never constitute and shall not be considered obligations, general or otherwise, of the State of Texas, the Texas Transportation Commission, or the Texas Department of Transportation, or any other political subdivision thereof. The deadline for receipt of written comments is 10:30 a.m. on April 12, 2019. Comments should be sent to: Texas Private Activity Bond Surface Transportation Corporation, Attention: President, Board of Directors, 125 East 11th Street, Austin, Texas 78701.

TRD-201900999
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 3, 2019

♦ ♦ ♦

Supreme Court of Texas

In the Supreme Court 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 April 12, 2019, issue of the Texas Register.)

TRD-201900950
Pauline Easley
Rules Attorney
Supreme Court of Texas
Filed: March 28, 2019

♦ ♦ ♦

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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