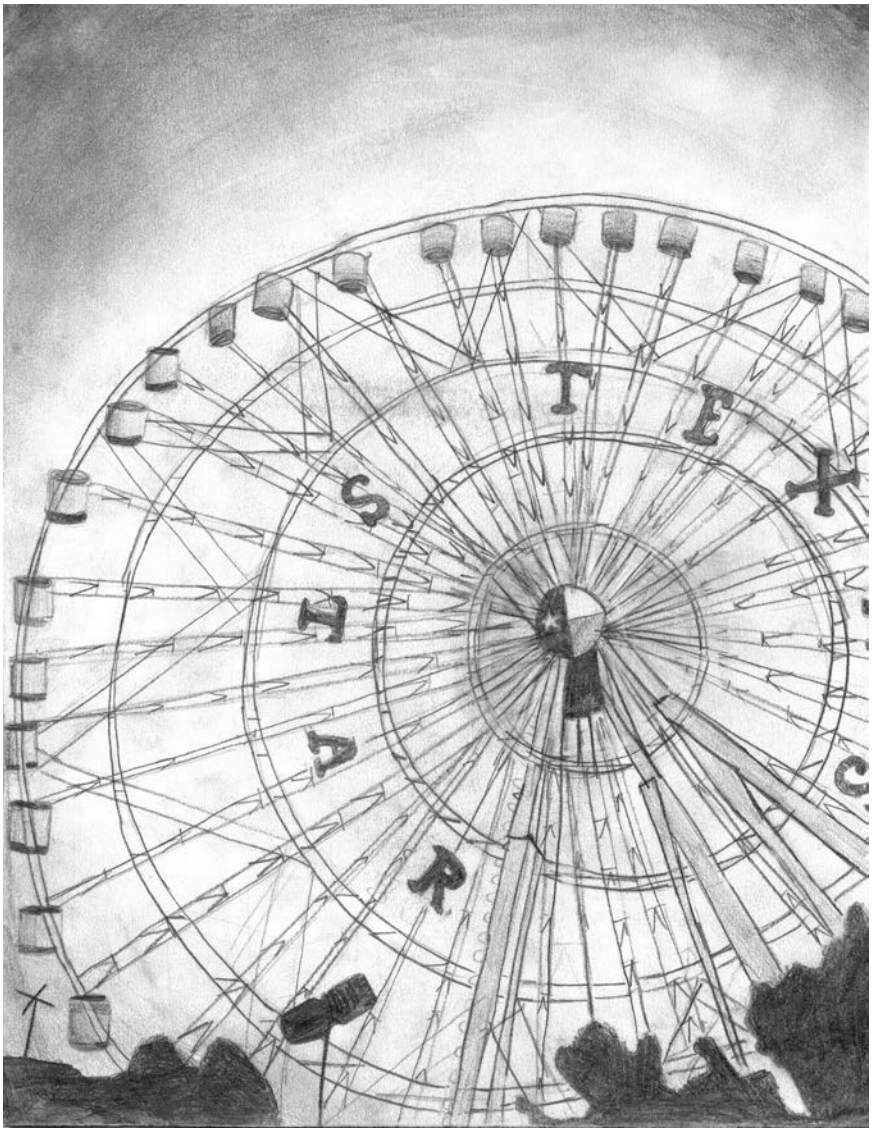
TEXAS REGISTER

Volume 37 Number 19 *May 11, 2012* *Pages 3481 - 3644*



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***Texas Register,* (ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
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Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Office of the Attorney General

Requests for Opinions

RQ-1057-GA

Requestor:

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

300 West Third Avenue, Suite 203

Corsicana, Texas 75110

Re: Authority of a home rule city with a population of less than 900,000 to enact an ordinance prohibiting the sale of alcoholic beverages within 1000 feet of a public school (RQ-1057-GA)

Briefs requested by May 31, 2012

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

TRD-201202272

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: May 2, 2012

♦ ♦ ♦

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State proposes the repeal of §§95.100 - 95.117, 95.200 - 95.207, 95.300 - 95.313, 95.350 - 95.358, 95.370 - 95.372, 95.400 - 95.418, 95.500 - 95.504, 95.600 - 95.607, and 95.700 - 95.703; and new §§95.100 - 95.109, 95.200 - 95.205, 95.300 - 95.313, 95.400 - 95.408, 95.500 - 95.505, and 95.600 - 95.607, concerning the Uniform Commercial Code. The proposed repeals and new sections are necessary to conform the Secretary of State's rules to national model administrative rules promulgated by the International Association of Commercial Administrators.

Randy Moes, Director of Uniform Commercial Code Section, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing these sections.

Mr. Moes also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposals may be submitted to Randy Moes, Director, Uniform Commercial Code Section, P.O. Box 13193, Austin, Texas 78711-3193. The public comment period ends on June 11, 2012 at 5:00 p.m.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.100 - 95.117

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.100. Policy Statement.
§95.101. Definitions.
§95.102. Singular and Plural Forms.
§95.103. Place to File.
§95.104. Filing Office Identification.
§95.105. Office Hours.
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§95.115. Public Records Services.
§95.116. Fees for Public Records Services.
§95.117. New Practices and Technologies.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202178
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §§95.200 - 95.207

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of

the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.200. Policy Statement.
§95.201. Duty to File.
§95.202. Grounds for Refusal of UCC Document.
§95.203. Grounds not Warranting Refusal.
§95.204. Procedure Upon Refusal.
§95.205. Acknowledgment.
§95.206. Other Notices.
§95.207. Refusal Errors.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202179
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §§95.300 - 95.313

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202180
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER D. EDI DOCUMENTS

1 TAC §§95.350 - 95.358

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

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§95.356. Refusal of EDI Document.

§95.357. Acceptance and Archives.

§95.358. EDI UCC Search Requests.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202181
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER E. DIRECT ON-LINE (SOSDIRECT) DATA ENTRY PROCEDURES

1 TAC §§95.370 - 95.372

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.370. Definitions.

§95.371. Document Filing Procedures.

§95.372. Search Request Procedures.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202182
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER F. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.400 - 95.418

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

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§95.416. Archival Searches.

§95.417. Notice of Bankruptcy.

§95.418. Judicial Finding of Fact.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202183
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §§95.500 - 95.504

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

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§95.503. Rules Applied to Search Requests.
§95.504. Search Responses.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202184
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §§95.600 - 95.607

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.600. Policy Statement.
§95.601. Notice of Federal Lien.
§95.602. Notice of Utility Security Instrument.
§95.603. Notice of Restitution Lien.
§95.604. Notice of Agricultural Chemical and Seed Liens.
§95.605. Notice of Liens for Animal Feed.
§95.606. Notice of Aircraft Maintenance Liens.
§95.607. Notice of Contract Agricultural Liens.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202185
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER I. RULEMAKING PROCEDURE

1 TAC §§95.700 - 95.703

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register Section, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.700. Policy Statement.
§95.701. Procedure for Adoption of Rules.

§95.702. Authority to Adopt Rules.

§95.703. Implementation.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202187
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.100 - 95.109

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.100. Definitions.

Terms used in these filing-office rules but not defined in this section that are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

(1) Active record. "Active record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes.

(2) Address. "Address" means information provided as an address on a UCC record as long as it includes at least a city and a state or foreign country.

(3) Amendment. "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(4) Assignment. "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(5) Correction statement. "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(6) Filing office/officer. "Filing office" and "filing officer" mean Texas Secretary of State.

(7) Filing officer statement. "Filing officer statement" means a statement entered into the filing office's information system to correct an error made by the filing office.

(8) Initial financing statement. "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(9) Remitter. "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(10) Searchable indexes. "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(11) Secured party of record. "Secured party of record" includes a secured party of record as defined in the UCC as well as person who has been a secured party of record with respect to whom an amendment has been filed purporting to delete them as a secured party of record.

(12) UCC. "UCC" means the Uniform Commercial Code as adopted in this state.

(13) UCC information management system. "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as described in paragraph (3) of this section.

(14) UCC record. "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement or a correction statement, and includes a record thereof maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.

(15) Unlapsed record. "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system, which has not yet lapsed under §9.515, Texas Business and Commerce Code, with respect to all secured parties of record.

§95.101. Means to Deliver UCC Records; Time of Filing.

UCC records may be tendered for filing at the filing office as follows.

(1) Personal delivery by remitter, at the filing office's street address. The file time for a UCC record delivered by this method is when delivery of the UCC record is taken by the filing office (even though the UCC record may not yet have been accepted for filing and subsequently may be rejected). This section applies only to a remitter who tenders a UCC record to the filing office and awaits an immediate determination of whether or not the UCC record will be taken or not.

(2) Courier delivery by a person other than a remitter, at the filing office's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

(3) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is the

next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

(4) Telefacsimile delivery, to the filing office's fax filing telephone number. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected) or the next close of business following the time of delivery. A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

(5) Electronic filing. UCC records, excluding correction statements and filing officer statements, may be transmitted electronically using the XML format approved by the filing office. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office. The filing office publishes an implementation guide that prescribes the use of the XML format. The implementation guide shall be available to the public upon request. The file time for a UCC record delivered by this method is the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

(6) Direct web page data entry. UCC records may be delivered by on-line data entry using the filing office's website on the internet. Website data entry and payment procedures are available as provided at https://direct.sos.state.tx.us/help/help.asp. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(7) Means of communication. Regardless of the method of delivery, information submitted to the UCC filing office must be communicated only in the form of characters that are defined in an acceptable character set. A financing statement or amendment form that does not designate separate fields for organization and individual names, and separate fields for first, middle and last names and suffixes for individual names is not an acceptable means of communication to the filing office.

(8) Transmitting utility, manufactured-home and public-finance transactions. The only means to indicate to the filing office that an initial financing statement is being filed in connection with a manufactured-home or public-finance transaction, or that a financing statement is being or has been filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of the lapse date under §95.306(3) of this title (relating to Initial Financing Statement) or §95.307 of this title (relating to Amendments Generally), is to so indicate by checking the appropriate box on a UCC1 Addendum filed with respect to the financing statement or by transmitting the requisite information in the proper field in an electronic filing that is such initial financing statement or is part of such financing statement.

§95.102. Search Request Delivery.

UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.

§95.103. Forms.

The forms prescribed by §9.5211, Texas Business and Commerce Code, are accepted by the filing office. Paper-based forms approved by the International Association of Commercial Administrators from time to time and forms otherwise approved by the filing office from time to time shall be accepted. A list of forms approved by the filing office will be made available on request.

§95.104. Fees.

(a) Filing fee. The fee for filing and indexing a UCC record of one or two pages communicated on paper or in a paper-based format (including faxes) is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code. The fee for filing and indexing a UCC record communicated by a medium authorized by these sections which is other than on paper or in a paper-based format is pursuant to §9.525(a)(3), Texas Business and Commerce Code. The fee for filing and indexing a master filing delivered in a format pursuant to §9.512(f) and §9.514(d), Texas Business and Commerce Code, is pursuant to §9.525(f), Texas Business and Commerce Code. The fee for filing and indexing a judicial finding of fact is pursuant to §51.905, Texas Government Code.

(b) Additional fees. In addition to fees set forth in subsection (a) of this section, a fee pursuant to §9.525(b)(1), Texas Business and Commerce Code, shall be paid for an initial financing statement that indicates that it is filed in connection with a public-finance transaction, a fee pursuant to §9.525(b)(2), Texas Business and Commerce Code, shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee pursuant to §9.525(b)(3), Texas Business and Commerce Code, shall be paid for an initial financing statement that indicates that the debtor is a transmitting utility.

(c) UCC search fee. The fee for processing a UCC search request communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for processing a UCC search request communicated by XML is $3 and by SOSDirect is $15. The fee for responding to a web inquiry which was communicated by SOSDirect is $1.

(d) UCC search - copies. The fee for certified copies of records is pursuant to §405.031, Texas Government Code. The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title (relating to Fees for Copies of Public Information).

§95.105. Expedited Services.

(a) Description of expedited service and fee.

(1) Expedited service and fees for filings - per page copies. Upon the request of any person, the filing office will expedite the filing of any document submitted to the Uniform Commercial Code Section. Generally, the filing of any such document shall occur before the close of business on the next business day following the document's date of receipt. The fee for this service is pursuant to §405.032, Texas Government Code. Charges for copies that accompany this service are pursuant to §552.261, Texas Government Code, and §71.7 of this title (relating to Requests to Transmit Documents by FAX Machine; Fee).

(2) Expedited service for UCC search request - per page copies. Upon the request of any person, the filing office will expedite the handling of a UCC search request, with or without copies, that is submitted to the Uniform Commercial Code Section. Generally, the expedited request will be processed before the close of business on the next business day following the document's date of receipt.

The fee for this service is pursuant to §405.032, Texas Government Code. Charges for copies that accompany this service are pursuant to §552.261, Texas Government Code, and §71.7 of this title. A completed expedited search request may be mailed, faxed, or picked up in person.

(b) How to request expedited service.

(1) Expedited filing. UCC records presented in person or by fax are treated as an expedited filing.

(2) Expedited UCC search request. Requests for UCC records may be submitted by mail, telephone, fax, or in person.

§95.106. Methods of Payment.

Filing fees and fees for public records services may be paid by the following methods.

(1) Cash. Payment in cash shall be accepted if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks and money orders made payable to the filing office shall be accepted for payment provided that the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion. Checks may be made payable in an amount to be filled in by the filing office if the filing office is clearly authorized to fill in the amount. All checks must be drawn on a U.S. bank.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Prepaid account. A remitter may open an account for prepayment of fees. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees by this method. The filing officer shall deduct filing fees from the remitter's prepaid account when authorized to do so by the remitter. The remitter may authorize transactions against the prepaid account by use of the remitter's SOS-Direct account, by written authorization, facsimile, and by telephone authorization.

(5) Credit cards. The filing office shall accept payment by credit cards issued by approved credit card issuers. Approved credit card issuers are: American Express, Discover, MasterCard, or Visa or other valid and current credit cards designated by the contract(s) then existing between the Office of the Secretary of State, the Comptroller of Public Accounts, and the relevant financial institution. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed payment. Fees paid by credit card are subject to a statutorily authorized convenience fee of the total fees incurred, when applicable. The convenience fee is assessed per credit card transaction.

(6) LegalEase. The filing office accepts payment via LegalEase from remitters who have entered into appropriate LegalEase arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements.

§95.107. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment exceeding $5 to the remitter. The filing officer shall accrue the amount of the overpayment to the prepaid account if the overpayment is less than $5. This amount may be refunded only upon the written request of the remitter.

(b) Underpayment. Upon receipt of a UCC record with an insufficient fee, the filing officer shall do the following: The UCC record and fee shall be returned to the remitter as provided in §95.203 of this title (relating to Procedure Upon Refusal).

§95.108. Public Records Services.

Public records services are provided on a non-discriminatory basis to any member of the public. Copies of individual UCC records, bulk copies of records and data elements from the filing office's UCC information management system are made available in such forms, at such times and for such fees as the filing office may prescribe from time to time; provided that the filing office will make such information as is then-current available at least weekly in every medium then available to the filing office.

§95.109. Fees for Public Records Services.

Fees for public records services (other than those established under §95.104 of this title (relating to Fees)) are established by the filing office from time to time and are available upon request.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202188
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §§95.200 - 95.205

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.200. Role of Filing Officer.

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to these sections, the filing officer does not determine the legal sufficiency or insufficiency of the UCC record, determine that information in the record is correct or incorrect, in whole or in part, or create a presumption that information in the UCC record is correct or incorrect in whole or in part.

§95.201. Time for Filing a Continuation Statement.

(a) First day permitted. The first day on which a continuation statement may be filed is the date corresponding to the date upon which the related financing statement would lapse, six months preceding the month in which such financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The foregoing provision is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to §95.101 of this title (relating to Means to Deliver UCC Records; Time of Filing).

(b) Last day permitted. The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses. The foregoing provision is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to §95.101 of this title. Accordingly, the time of filing of the continuation statement under §95.101 of this title must be on or prior to such last day and delivery by certain means of communication may not be available on such last day if the filing office is not open for business on such day.

§95.202. Grounds for Refusal.

In addition to refusing a record for any reason, or multiple reasons, as set forth in §9.516, Texas Business and Commerce Code, a filing office shall refuse to accept a UCC record that does not provide an address that meets the minimum requirements, as set forth in these filing-office rules (see §95.100(2) of this title (relating to Definitions)).

§95.203. Procedure Upon Refusal.

Except as provided in §95.107 of this title (relating to Overpayment and Underpayment Policies), if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the document, if written, to the remitter and may return or refund the filing fee. Communication of the refusal, the reason(s) for the refusal and other related information will be made to the remitter as soon as practicable and in any event within two business days after the refused UCC record was received by the filing office, by the same means as the means by which such UCC record was delivered to the filing office, or by mail or such more expeditious means as the filing office shall determine. Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

§95.204. Refusal Errors.

If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under §95.202 of this title (relating to Grounds for Refusal), the filing officer will file the UCC record with the filing date and time the UCC record was originally tendered for filing. A filing officer statement record relating to the relevant initial financing statement will be placed in the UCC information management system on the date that the corrective action was taken. The filing officer statement must provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

§95.205. Notification of Defects.

Nothing in these sections prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202189
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §§95.300 - 95.313

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.300. General.

The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors included on financing statements that are active records. No distinction will be made between upper and lower case letters for indexing purposes. The sections in this subchapter describe the UCC information management system.

§95.301. Primary Data Elements.

The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

(A) Each initial financing statement is identified by its file number. Identification of the initial financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in the system. The record is identified by the same information assigned to the initial financing statement.

(B) A UCC record other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the UCC information management system, records of all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of record. The type of UCC record from which data is transferred is identified in the UCC information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC records are stored in the UCC information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system.

(5) Page count. The total number of pages in a UCC record is maintained in the UCC information management system.

(6) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in §§95.306(3), 95.307, 95.308(a), and 95.408 of this title (relating to Initial Financing Statement; Amendments Generally; Continuation Statement; and Lapse Date and Time).

(7) Indexes of names. The filing office maintains in the UCC information management system a searchable index of organization debtor names, and a searchable index of individual debtor names. The filing office may also maintain a searchable index of names of secured parties of record. Such an index need not be a separate database but may be comprised of records in the UCC information management system identified to be included in such searchable index.

§95.302. Individual Debtor Names.

For purposes of these sections, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) "Individual name fields." Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a last name and shall be entered in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(2) Titles, prefixes and suffixes. Titles, prefixes (e.g., "Ms.") and suffixes or indications of status (e.g., "M.D.") are not typically part of a debtor's name. However, when entering a "name" into the UCC information management system, the data will be entered exactly as they appear.

(3) Truncation - individual names. Personal name fields in the UCC information management system are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows.

(A) First name: 50 characters.

(B) Middle name: 50 characters.

(C) Last name: 50 characters.

(D) Suffix: 6 characters.

§95.303. Organization Debtor Names.

For purposes of these sections, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names are stored in files that include only the organization debtor names and not individual debtor names. A single field is used to store an organization debtor name.

(2) Truncation - organization names. The organization debtor name field in the UCC information management system is fixed in length. The maximum length is 300 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the organization debtor name field.

§95.304. Estates.

The debtor name to be provided on a financing statement for a debtor that is an estate is the name of the relevant decedent. In order for the information management system to function is accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

§95.305. Trusts.

The debtor name to be provided for a debtor that is a trust or a trustee acting in respect of trust property is the name of the trust as set forth in its organic record(s), if the trust has such a name or, if the trust is not so named, the name of the trust's settlor. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization should be provided as an organization debtor name, and the name of a settlor who is an individual should be provided as an individual debtor name, in each case without regard to the nature or character of the debtor. Notwithstanding the foregoing, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

§95.306. Initial Financing Statement.

Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system so long as the financing statement is an active record.

(3) Status of financing statement. The financing statement shall be an active record. A lapse date shall be calculated, five years from the file date, unless:

(A) the initial financing statement indicates as provided in §95.101(8) of this title (relating to Means to Deliver UCC Records; Time of Filing) that it is filed with respect to a public-finance transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date; or

(B) the initial financing statement indicates as provided in §95.101(8) of this title that it is filed against a transmitting utility, in which case there shall be no lapse date.

§95.307. Amendments Generally.

Upon the filing of an amendment the status of the parties shall be unchanged, except that in the case of an amendment that adds a debtor or secured party, the new debtor or secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system, and an amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. Notwithstanding the filing of an amendment that deletes a debtor or secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system. A deleted secured party will still be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment. In general, the filing of an amendment does not affect the status of the financing statement, but an amendment that indicates that the debtor is a transmitting utility will cause the filing office to reflect in the information management system that the amended financing statement has no lapse date.

§95.308. Continuation Statement.

(a) Continuation of lapse date. Upon the timely filing of one or more continuation statements by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years. The lapse date is postponed once notwithstanding the fact that more than one continuation statement is filed within a given six-month period prior to a lapse date. Notwithstanding the immediate postponement of the lapse date with respect to one or more secured parties of record who file timely a continuation statement within a given six-month period prior to a lapse date, such lapse date remains effective solely for purposes of determining whether or not a subsequent continuation statement filed in the same six-month period is timely.

(b) Status. The filing of a continuation statement shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.

§95.309. Termination.

The filing of a termination shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.

§95.310. Correction Statement.

The filing of a correction statement shall have no effect upon the status of any party to the financing statement, the status of the financing statement or to the information maintained in the UCC information management system.

§95.311. Filing Officer Statement.

A filing officer statement affects the status of parties and of the relevant financing statement as provided in the corrective action described as having been taken in the filing officer statement.

§95.312. Procedure Upon Lapse.

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office.

§95.313. Removal of Record.

A financing statement must remain as an active record until at least one year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one year after it is terminated with respect to all secured parties of record. On or after the first anniversary of such lapse or termination date, the filing office or the UCC information management system may remove the financing statement and all related UCC records from the searchable indexes or from the UCC information management system and upon such removal, the removed UCC records shall cease to be active records. UCC records removed from the UCC information management system shall be maintained as provided in §95.407 of this title (relating to Archives - General).

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202190
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER D. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.400 - 95.408

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.400. Errors of the Filing Office.

The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a record of a financing statement after the filing office has issued a search report with a through date and time (see §95.505(2)(D) of this title (relating to Search Responses)) that is on or after the filing date and time of the financing statement, the filing office will associate with the record of the financing statement in the UCC information management system a filing officer statement on the date that the corrective action was taken providing the date and an explanation of the correction.

§95.401. Data Entry.

(a) Characters of print acceptable in names.

(1) Names may consist of letters of the Roman alphabet, Arabic numerals, symbols capable of being reproduced on a standard English language keyboard, and such other symbols as permitted by the secretary of state's database and as posted on the secretary of state's website, or a combination thereof.

(2) No distinction will be made between upper and lowercase letters for indexing purposes. No distinction as to typeface or font in the presentation of any name will be recognized. Subscript or superscript characters cannot be entered into the computer records of the secretary of state; consequently, such characters will not appear above or below the other characters in the name. Example: H_2O will appear as H2O.

(3) Arabic numerals include 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(4) The symbols recognized as part of a name may include ! " $ % ' ( ) * ? # = @ [ ] / + & and -.

(b) Data entry. Data that meets the guidelines in subsection (a) of this section are entered into the UCC information management system exactly as provided in the UCC record, without regard to apparent errors. Data provided in electronic form that meets the guidelines of subsection (a) of this section is transferred to the information management system exactly as submitted by the remitter.

§95.402. Verification of Data Entry.

The filing office will verify accuracy of the data from UCC records entered in accordance with §95.401 of this title (relating to Data Entry) into the UCC information management system, except that debtor name data are verified by double-blind keying. Data entry performed by remitters with respect to electronically filed UCC records is the responsibility of the remitter and is not verified by the filing office.

§95.403. Master Filings.

(a) The filing officer may accept for filing a single UCC record for the purpose of amending or assigning more than one financing statement. Master amendments may accomplish one or both of the following purposes: amendment to change secured party name; amendment to change secured party address. Master assignments may accomplish a full assignment from a single assignor to a single assignee.

(b) A master filing shall consist of a written document describing the requested amendment or assignment on a form approved by the filing office, and a machine readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of the master filing specifications is available from the filing officer upon request. Acceptance of a master filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

§95.404. Notice of Bankruptcy.

The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

§95.405. Redaction of Certain Information.

The filing officer is obliged to redact certain information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws. Such information should not be included in UCC records and will be redacted in accordance with such laws.

§95.406. Judicial Finding of Fact.

A record is created for the certified copy of the judicial finding of fact that bears the file number for the judicial finding of fact and the date and time of filing. The record of the judicial finding of fact is associated with the record of the related initial financing statement in a manner that causes the judicial finding of fact to be retrievable each time a record of the financing statement is retrieved.

§95.407. Archives - General.

Active and lapsed filings are available by search of the debtor name or by request under a specific file number. Inactive records are available upon request by a specific file number only.

(1) Paper UCC documents.

(A) Storage. Documents are stored in expanding file pockets in sequential number in file boxes.

(B) Retention. Documents are stored on site for six months after receipt. Documents are transported to State Archives for a period of two years six months prior to destruction.

(2) Reductions.

(A) Storage. Paper documents are reduced to digital images prior to indexing.

(B) Retention. Digital images and previous microfilm are retained indefinitely.

(3) Database storage. The UCC information management system is backed up daily.

§95.408. Lapse Date and Time.

A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday in accordance with §311.014(b), Texas Government Code.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202191
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER E. SEARCH REQUESTS AND REPORTS

1 TAC §§95.500 - 95.505

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title

6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.500. General Requirements.

The filing officer maintains for public inspection a searchable index for all active records in the UCC information management system. Active records will be retrievable by the name of the debtor, with no distinction made between upper and lower case letters, or by the file number of the related financing statement, and each active record related to an initial financing statement is retrieved with the initial financing statement using either retrieval method.

§95.501. Search Requests - Required Information.

Search requests shall include the following.

(1) Name searched. A search request must set forth the name of a debtor to be searched using designated fields for organization or individual first, middle and last names. A search request will be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the search.

(2) Requesting party. The name and address of the person to whom the search results are to be sent.

(3) Fee. The appropriate fee shall be tendered by a method described in §95.106 of this title (relating to Methods of Payment).

(4) Search logic. The request shall specify if a search methodology other than that described in §95.503(1) of this title (relating to Search Methodology) is to be applied in conducting the search. If no such methodology is specified, the one described in §95.503(1) of this title shall be applied.

§95.502. Search Requests - Optional Information.

Search requests may include the following.

(1) Copies. The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that include a particular city in the debtor address.

(2) Scope of search. A search request may ask for a search that reports all active records retrieved by the search.

(3) Mode of delivery. A search request may specify a mode of delivery for search results and that request will be honored if the requested mode is made available by the filing office.

(4) Search request with filing. If a filer requests a search at the time an initial financing statement is filed by checking the appropriate box or populating the appropriate field in or on the initial financing statement at the time it is tendered for filing, the search request shall be deemed to request a search to be conducted as soon as practicable such that it would include all UCC records filed, against the debtor name(s) provided on the initial financing statement, on or prior to the date the initial financing statement is filed.

§95.503. Search Methodology.

Search results are produced by the application of search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search.

(1) Standard search logic. Subparagraphs (A) - (J) describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a non-standard search logic be used.

(A) There is no limit to the number of matches that may be returned in response to the search criteria.

(B) No distinction is made between upper and lower-case letters.

(C) The character "&" (the ampersand) is deleted and replaced with the characters "and" each place it appears in the name.

(D) Punctuation marks and accents are disregarded. For the purposes of this paragraph, punctuation and accents include all characters other than the numerals 0 through 9 and letters A through Z (in any case) of the English alphabet.

(E) The following words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are "disregarded" to the extent practicable as determined by the filing office's programming of its UCC information management system:
Figure: 1 TAC §95.503(1)(E)

(F) The word "the" at the beginning of an organization debtor name is disregarded.

(G) All spaces are disregarded.

(H) For first and middle names of individual debtor names, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.
Figure: 1 TAC §95.503(1)(H)

(I) If the name being searched is the last name of an individual debtor name without any first or middle name provided, the search will retrieve from the UCC information management system all financing statements with individual debtor names with the last name being searched.

(J) After using subparagraphs (A) - (I) of this paragraph to modify the name being searched, the search will retrieve from the UCC information management system all active records that pertain to financing statements with debtor names that, after being modified as provided in this section, exactly match the modified name being searched.

(2) Non-standard search logic. The following non-standard search logic option is available for customers that have access to our online search site: wildcard debtor name search. This search option allows customers to search a character string at the beginning or anywhere within the organization, last and/or first name fields. The displayed results consist only of the filing number and the debtor name.

§95.504. Changes in Standard Search Logic.

If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of such change.

§95.505. Search Responses.

Responses to a search request shall include the following.

(1) Copies. Copies of all UCC records retrieved by the search unless only limited copies are requested by the searcher. Copies will reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(A) Filing office identification. Identification of the filing office responsible for the search response.

(B) Unique search report identification number. Unique number which identifies the search report.

(C) Report date. The date the report was generated.

(D) Through date and time. The date and time at or prior to which a UCC record must have been filed with the filing office in order for it to be reflected on the search.

(E) Certification language. A report created by the filing officer in response to a request shall contain the following statement: "My acceptance for filing and custody of these documents in no way confirms, denies, or implies validity, legal effect, or enforceability of the attached documents."

(F) Scope of search. Search results shall consist of all active records.

(G) Search logic used. IACA Recommended Standard Search Logic.

(H) Name provided. Name as provided by searcher.

(I) Search string. Normalized name as provided by §95.503 of this title (relating to Search Methodology).

(J) Lien type searched. Financing Statement, Manufactured-Home Transaction, Public-Finance Transaction, Transmitting Utility, Utility Security Instrument, Notice of Federal Lien, Restitution Lien, Agricultural Chemical and Seed Lien, Liens for Animal Feed, Aircraft Maintenance Lien, Contract Agricultural Lien, and Transition Property Notice.

(K) Copies. Certified, plain, copies not requested, partial copies, and specified copies.

(3) Report. The search report shall contain the following.

(A) Identification. Identification of the filing office responsible for the search report.

(B) Search report identification number. Unique number assigned under paragraph (2)(B) of this section.

(C) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria. Financing statement information shall include, but is not limited to the following.

(i) Initial financing statement file number. The initial financing statement file number.

(ii) Initial financing statement filing date and time. The date and time it was filed.

(iii) Lapse date. Provide lapse date.

(iv) Debtor name. The debtor name(s) that appear(s) of record.

(v) Debtor address. The debtor address(es) that appear(s) of record.

(vi) Secured party name. The secured party name(s) that appear(s) of record.

(vii) Secured party address. The secured party address(es) that appear(s) of record.

(viii) Amendment type. An indication of type of each amendment, if any.

(ix) Amendment filing date and time. The date and time each amendment, if any, was filed.

(x) Amendment filing number. The amendment file number of each amendment, if any.

(xi) Correction statement filing date and time. The date and time a correction statement, if any, was filed.

(xii) Filing officer statement filing date and time. The date and time a filing officer statement, if any, was filed.

(xiii) Judicial finding of fact filing date and time. The date and time a judicial finding of fact, if any, was filed.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202192
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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SUBCHAPTER F. OTHER NOTICES OF LIENS

1 TAC §§95.600 - 95.607

The new sections are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.600. General.

The purpose of sections in this subchapter is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially

similar to UCC records and are included with the reports described in §95.505 of this title (relating to Search Responses).

§95.601. Notice of Federal Lien.

(a) Filing. Notices of federal liens such as federal tax liens, environmental, and pension will be accepted for filing as defined in Chapter 14, Texas Property Code. Notices of federal liens are filed and indexed within the UCC information management system. Notices of federal liens such as notices of discharge, release, and refiling are filed as though they were financing statement amendments and must include identification of the initial file number (as defined in §9.519(b), Texas Business and Commerce Code). A separate notice or certificate form is submitted for each federal lien. An amendment to a federal lien shall be refused if the document's identification of the initial lien does not correspond to the identification number and filing date of a federal lien then active in the UCC information management system.

(1) Where to file. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens are filed with the filing office pursuant to §14.002, Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to §14.005, Texas Property Code.

(3) Duration. The notice is effective until a certificate of release, nonattachment, discharge, or subordination is filed with the filing office pursuant to §14.004, Texas Property Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to §14.004, Texas Property Code and as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §14.004, Texas Property Code and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.602. Notice of Utility Security Instrument.

(a) Filing. A utility security instrument, an instrument that supplements or amends a utility security instrument, or a statement of name change, merger, or consolidation will be accepted for filing as defined in Chapter 261, Texas Business and Commerce Code. A separate notice is submitted for each utility security instrument and is filed and indexed within the UCC information management system. An instrument that supplements or amends a utility security, or a statement of name change, merger, or consolidation is filed and indexed within the UCC information management system as though it were a financing statement amendment and must include the identification of the initial file number (as defined in §9.519(b), Texas Business and Commerce Code). An amendment to a utility security instrument shall be refused if the document's identification of the initial filing does not correspond to the identification number of a utility security instrument then active in the UCC information management system.

(1) Where to file. Utility security instruments, instruments supplementary or amendatory thereto, or a statement of name change, merger, or consolidation are filed with the filing office pursuant to §261.004, Texas Business and Commerce Code.

(2) Fee. The required fee for filing and indexing each utility security instrument, an instrument that supplements or amends a utility security instrument, or a statement of name change, merger, or consolidation is pursuant to §261.008, Texas Business and Commerce Code.

(3) Duration. The perfection and notice provided by the filing of a utility security instrument take effect on the date of filing and remain in effect without any renewal, refiling, or continuation statement until the interest granted as security is released by the filing of a termination statement, or a release of all or a part of the property, signed by the secured party pursuant to §261.005, Texas Business and Commerce Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to §261.009, Texas Business and Commerce Code and as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §261.009, Texas Business and Commerce Code and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.603. Notice of Restitution Lien.

(a) Filing. Restitution liens will be accepted for filing as defined in Article 42.22, Texas Code of Criminal Procedure. Restitution liens are filed and indexed within the UCC information management system. A separate affidavit is submitted for each restitution lien.

(1) Where to file. Restitution liens are filed with the filing office pursuant to Article 42.22, §7, Texas Code of Criminal Procedure.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Article 42.22, §7, Texas Code of Criminal Procedure.

(3) Duration. The lien expires on the 10th anniversary of the date the lien was filed or on the date the defendant satisfies the judgment creating the lien, whichever occurs first pursuant to Article 42.22, §12, Texas Code of Criminal Procedure. The lien may be refiled before the date the lien expires and will expire on the 10th anniversary of the date the lien was refiled or that the defendant satisfies the judgment creating the lien, whichever occurs first.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.604. Notice of Agricultural Chemical and Seed Liens.

(a) Filing. Agricultural chemical and seed liens will be accepted for filing as defined in Chapter 128, Texas Agricultural Code. Agricultural chemical and seed liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each agricultural chemical and seed lien.

(1) Where to file. Agricultural chemical and seed liens are filed with the filing office pursuant to §128.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to §128.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to §128.011, Texas Agriculture Code. The lien may be terminated pursuant to §128.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §128.031, Texas Agriculture Code, and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.605. Notice of Liens for Animal Feed.

(a) Filing. Animal feed liens will be accepted for filing as defined in Chapter 188, Texas Agricultural Code. Animal feed liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each animal feed lien.

(1) Where to file. Animal feed liens are filed with the filing office pursuant to §188.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to §188.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to §188.011, Texas Agriculture Code. The lien may be terminated pursuant to §188.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §188.031, Texas Agriculture Code, and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.606. Notice of Aircraft Maintenance Liens.

(a) Filing. Aircraft maintenance liens will be accepted for filing as defined in Chapter 70, Subchapter D, Texas Property Code. Aircraft maintenance liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each aircraft maintenance lien.

(1) Where to file. Aircraft maintenance liens are filed with the filing office pursuant to §70.3031, Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to §70.3031, Texas Property Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to §95.408 of this title (relating to Lapse Date and Time).

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.607. Notice of Contract Agricultural Liens.

(a) Filing. Contract agricultural liens will be accepted for filing as defined in Chapter 70, Subchapter E, Texas Property Code. Contract agricultural liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each contract agricultural lien.

(1) Where to file. Contract agricultural liens are filed with the filing office pursuant to Chapter 70, Subchapter E, Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to Chapter 70, Subchapter E, §70.404, Texas Property Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to Chapter 70, Subchapter E, §70.407, Texas Property Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 70, Subchapter E, §70.404, Texas Property Code, and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202193
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-2709

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

DIVISION 3. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM

4 TAC §§17.26 - 17.29

The Texas Department of Agriculture (the department) proposes new §§17.26 - 17.29, concerning the Texas Grain Producer Indemnity Fund Program (Program), established as Texas Agriculture Code, Chapter 41, Subchapter I, by the enactment of House Bill 1840 (HB 1840), 82nd Legislature, 2011. The new sections provide procedures for conducting the grain producer indemnity referendum authorized by HB 1840, including voter eligibility requirements, notice requirements, voting procedures, verification requirements, and the process for requesting a recount.

Dolores Alvarado Hibbs, General Counsel, has determined that for the first five years the new sections are in effect, there will be no fiscal implications for state or local government as a result of the administration and enforcement of the new sections. Any costs incurred in the conduct of the grain producer indemnity referendum will be paid by the Program.

Ms. Hibbs also has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of administering and enforcing the new sections will be having rules in place to provide grain producers information on how the grain producer indemnity referendum will be conducted. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the new sections, as proposed.

Written comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the new sections in the *Texas Register.*

New §§17.26 - 17.29 are proposed under the Texas Agriculture Code, Chapter 41, Subchapter I, §41.212, which requires that the department adopt rules necessary to conduct a grain producers indemnity referendum.

The code affected by this proposal is the Texas Agriculture Code, Chapter 41.

§17.26. Scope and Applicability.

Except where exempted by this division, or by the Texas Agriculture Code Chapter 41, as amended by HB 1840, enacted by the 82nd Legislature, Regular Session, 2011 (HB 1840), Chapter 17, Subchapter A, Division 1, governs the Texas Grain Producer Indemnity Fund Program and referendum. This division controls in case of conflict with other sections of this subchapter.

§17.27. Definitions.

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

(1) Balloting--Procedure in which ballots are available to eligible producers at designated locations and then returned to the department with the producer's indication of vote and signature indicating voter eligibility as a bona fide producer.

(2) Board--The members of the Texas Grain Producer Indemnity Board as established by Texas Agriculture Code, Chapter 41, as amended by HB 1840.

(3) Commissioner--The commissioner of agriculture.

(4) Department--The Texas Department of Agriculture.

(5) Grain Producer--A person, including the owner of a farm on which grain is produced, or the owner's tenant or sharecropper, engaged in the business of producing grain or causing grain to be produced for commercial purposes.

§17.28. Voter Eligibility.

A grain producer, as defined in §17.27 of this division (relating to Definitions), who has sold grain to a grain buyer in the 36 months before the date of the referendum is eligible to vote in a referendum conducted under this division.

§17.29. Conduct of Referendum; Ballots; Canvass and Watchers; Recounts.

(a) The Commissioner shall conduct a referendum as authorized under the Texas Agriculture Code, Chapter 41, as amended by HB 1840.

(b) Based upon decisions of the Board, the Commissioner shall propose in a referendum:

(1) The maximum assessment to be paid by grain producers; and

(2) The manner in which the assessment will be collected.

(c) Legal notice must be published 90 days prior to the referendum in one or more statewide or regional newspapers that provide reasonable notice throughout the state. In addition, at least 90 days before the date of the referendum, the department will give direct written notice of the referendum, including the information required to be in the notice by subsection (d) of this section, to each Texas AgriLife County Extension office in the state.

(d) Notice provided in accordance with subsection (c) of this section shall include:

(1) the date, hours and polling places for voting in the referendum;

(2) the maximum estimated amount of the assessment proposed to be collected, and the basis of collection;

(3) the manner in which the referendum is to be conducted and the proceeds administered and used; and

(4) who to contact for more information.

(e) An eligible grain producer may vote only once in a referendum and each vote is of equal weight, regardless of the grain producer's volume of production.

(f) A referendum is approved if the Commissioner finds that:

(1) two-thirds or more of those voting in the election voted in favor of the referendum proposition; or

(2) those voting in favor of the proposition produced at least 50 percent of the volume of production of the commodity during the relevant production period.

(g) All voter information, including a producer's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552, Texas Government Code.

(h) Ballots must bear the signature and the address of the producer to be valid. A producer's signature on the ballot certifies that the voter sold grain to a grain buyer in the 36 months before the date of the referendum and that the production volume provided on the ballot is accurate.

(i) Ballots for the referendum will be counted in a manner determined by the commissioner.

(j) A canvassing committee(s) appointed by the commissioner shall verify the referendum results to the commissioner for certification.

(k) The department will be reimbursed by the Board for all costs associated with conducting a referendum under this division.

(l) The referendum will be conducted in person with ballots submitted by mail to the department by the grain producer. Ballots will be available to eligible producers at all Texas AgriLife County Extension offices. Eligible producers may pick up ballots during normal office hours of the Texas AgriLife County Extension offices during the voting period.

(1) An eligible producer who is unable to access a Texas AgriLife County Extension office to pick up a ballot may request a mail ballot by contacting department headquarters. No eligible producer requesting a mail ballot who verifies eligibility to vote shall be refused a ballot.

(2) Ballots must be returned to the department at the address indicated on the ballot, postage prepaid. Ballots not postmarked by midnight on the final day of the voting period will not be counted.

(3) Mail ballots submitted to the department shall be maintained at department headquarters located in Austin, Texas.

(m) A watcher may be present at department headquarters for the purpose of observing the processing of election results and until members of the canvassing committee complete their duties. Written notice of intent to be present during processing must be submitted to department headquarters at least three days prior to the count.

(n) After the ballots are counted and the results verified by the commissioner, the ballots shall be locked in a container and stored at the department's principal headquarters for a period of 30 days. The closed stored container containing referendum ballots cannot be opened for the 30-day period without a court order or written request for recount. If no contests or investigations arise out of the referendum within 30 days after certification of such referendum, the commissioner shall destroy the ballots by shredding.

(o) Request for Recount. A request for recount submitted under this subchapter must:

(1) be in writing;

(2) state the grounds for the recount;

(3) be submitted to the Commissioner within 10 calendar days of canvass results; and

(4) be signed by: the person requesting the recount or, if there is more than one person, any one or more of them and state each requesting person's name and residence address. If the request is made on behalf of an organization or association, the person submitting the request must state that they are authorized to request a recount on behalf of the organization or association.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202140
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Grain Producer Indemnity Board (TGPIB or board) proposes new Chapter 90, Subchapters A - E, §§90.1, 90.20 - 90.24, 90.30 - 90.38, 90.40 - 90.44, 90.50 and 90.51, concerning the operations of the board and indemnification of eligible grain producers in the event a grain buyer fails to pay the grain producer for the grain producer's grain. The new sections are adopted to establish the procedures for the TGPIB program, as provided for in the Texas Agriculture Code, Chapter 41, Subchapter I, and Texas Administrative Code, Title 4, Chapter 90. The new sections provide definitions, board duties and responsibilities, procedures for collecting producer assessments, recordkeeping and reporting requirements, procedures for initiating indemnity claims, and administrative review procedures. The new sections were developed with input from the board.

Dee Vaughan, chairman of the board, has determined that for the first five years the new sections are in effect, there will be no anticipated costs to state or local government, because any costs incurred will be covered by the TGPIB program from producer assessments. The anticipated economic cost to grain producers will be the cost of the assessment, which is based on the quantity and price of the grain sold by the producer. There will also be a cost to grain buyers in order to comply with the program. It is not possible to determine the buyers' costs at this time, but costs will likely be incurred due to the necessary administrative work by the grain buyer. The new sections provide for the grain buyer to retain a portion of its administrative costs of collecting the assessment.

Mr. Vaughan has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to provide a financial safety net for grain producers who have not been compensated for their stored or contracted grain.

Comments on the proposal may be submitted to Dee Vaughan, Chairman, Texas Grain Producer Indemnity Board, c/o Texas Corn Producers Board, 4205 North I-27, Lubbock, Texas 79403. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §90.1

Chapter 90, Subchapter A, is proposed under Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 41.

§90.1. Definitions.

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

(1) Board--The members of the Texas Grain Producer Indemnity Board as established by Texas Agriculture Code, Chapter 41.

(2) Claimant--A grain producer who satisfies the requirements of Texas Agriculture Code, §41.208 and files an indemnification claim with the Board.

(3) Commissioner--The commissioner of agriculture.

(4) Customary deductions--Typical monetary deductions made by a grain buyer from the sales price of grain, due to differences in weight, grade, quality, or other factors that influence price, as supported by general industry standards.

(5) Delivery point--The location at which grain is to be delivered under the terms of a contract, or if the grain is not sold pursuant to a contract, the location at which grain is to be transferred from the grain producer to the first grain buyer.

(6) Department--The Texas Department of Agriculture.

(7) Final sales price--The price to be paid by the grain buyer at the first point of sale to the grain producer, based on the terms

of the contract between the buyer and producer, or if no contract, based on customary market standards for reaching a price.

(8) First point of sale--The initial buyer of grain from a grain producer.

(9) FOB--"Free on board," referring to that designated location, or FOB point, where title to grain passes from the grain producer to the grain buyer.

(10) Grain--Means corn, soybeans, wheat, and grain sorghum, and includes that grain which is grown for seed.

(11) Grain buyer--A person who buys cultivated grain or seed from a grain producer, or stores unsold grain or seed for a grain producer. The term includes a purchaser, seed dealer, warehouseman, processor, or a commercial handler.

(12) Grain producer--A person, including the owner of a farm on which grain, or grain seed, is produced, or the owner's tenant or sharecropper, engaged in the business of producing grain or causing grain to be produced for commercial purposes.

(13) Grain sorghum--Any grain harvested from Sorghum bicolor (L.) Moench or any related species of the genus Sorghum of the family Poaceae, including, but not limited to, hybrid sorghum seeds, inbred sorghum line seed, sorghum cultivar seed, and all other sorghum seed that is grown for commercial production.

(14) Indemnification claim--A claim filed with the Board by a producer under Chapter 41, Subchapter I of the Texas Agriculture Code, seeking payment from the Board because a grain producer has suffered a loss due to a financial failure of a grain buyer.

(15) Judgment--As it pertains to "claim initiation date" and "financial failure" definitions, means a judgment entered by a court in the state of Texas having jurisdiction, with such judgment ordering the buyer to pay the claimant producer for grain that was delivered by the producer but not paid for by the buyer.

(16) Refund allotment--A payment issued by the Board to all grain producers who submitted an assessment in a given year, upon the Board's determination that the financial condition of the indemnity fund supports such a return of assessment dollars to participating grain producers.

(17) Service charge--Charge or fee that a grain producer may pay a grain buyer for activities related to the receipt, processing, holding, and shipment of grain.

(18) Warehouseman--A person who stores grain in a house, building, or other room, and is meant to include "public warehouse operators" and "warehouse operators," as those terms are defined in the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202141
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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SUBCHAPTER B. TEXAS GRAIN PRODUCER INDEMNITY BOARD

4 TAC §§90.20 - 90.24

Chapter 90, Subchapter B, is proposed under Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 41.

§90.20. Meetings.

(a) Location, conduct and time of meetings. The Board shall meet in a location within the state of Texas, with such location of each meeting to be determined by the Chairman of the Board. The Board may also conduct meetings via teleconference or other available electronic means, if the Chairman so designates. The Board shall meet at least quarterly, on specific dates to be determined by the Board. Meetings will be conducted in accordance with Chapter 41 of the Texas Agriculture Code and the Texas Open Meetings Act.

(b) Notice of meetings. A written notice of the agenda, date, time and place of each business meeting of the Board and/or hearing conducted by the Board, shall be posted on the Secretary of State's Open Meetings Website in accordance with the Open Meetings Act. In cases of emergency or urgent public necessity, notice shall be given as authorized by the Open Meetings Act.

(c) Chairman to preside. The chairman of the Board shall preside over all meetings of the Board and shall perform all duties delegated to him or her under this chapter. In the chairman's absence, the vice-chairman shall preside over all meetings of the Board, and shall perform all duties of the chairman under this chapter.

(d) Public comment period. As part of its business meetings, the Board shall include a public comment period to allow members of the public to appear and provide comment on matters within the jurisdiction of the Board. The Board, in its sole discretion, may impose a time limit on the public comment period generally or on person(s) addressing the Board. This item will be included in the agenda posted with the Secretary of State's office for the business meeting.

§90.21. Election of Officers.

Annually, the Board shall select a Chairman, Vice-Chairman, Secretary, and Treasurer among the Board members. Each officer shall be selected by a majority of Board members present at the time of the elections. Each person elected to serve as an officer shall serve in that particular office for no more than 1 year consecutively.

§90.22. Management of Budget.

(a) At each quarterly meeting, and annually, the Board shall review all of the Board's financial matters, including, but not limited to: fund income, amounts paid on claims in the preceding applicable period, and administrative costs. Based on this financial information, annually, the Board shall prepare a budget.

(b) The annual budget shall set the minimum fund balance necessary to cover all anticipated administrative and operating costs, as well as a reasonable estimate for indemnity claim payments. The Board shall submit the annual budget to the Commissioner for review and approval. Upon the Commissioner's approval, the Board is authorized to make expenditures for activities authorized by Chapter 41, Subchapter I of the Texas Agriculture Code.

§90.23. Selection of Board Agents.

The Board shall have the authority to select a third party to carry out the services and administrative duties necessary to operate the indemnity

fund and program, and to enter into contracts or other arrangements with such third party to operate the program described in Texas Agriculture Code, Chapter 41, Subchapter I.

§90.24. Reporting Requirements.

(a) The Board shall have an annual independent audit of the books, records of account and minutes of proceedings maintained by the Board prepared by an independent certified public accountant or firm of independent certified public accountants. The audit shall be filed with the Board, and the Commissioner, and shall be made available to the public by the Board or the Commissioner. The state auditor or the department may examine any work papers from the independent audit or may audit the transactions of the Board if the state auditor or the department's internal auditor determines that an additional audit is necessary.

(b) Not later than the 30th day after the last day of the fiscal year the Board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the Board during the preceding fiscal year. The annual report shall include, at a minimum:

(1) a balance sheet of assets and liabilities;

(2) an itemization of income/expenditures;

(3) a statement of Board activities carried out in the year covered by the report; and

(4) copies of any resolutions adopted by the Board regarding the program.

(c) The Board shall provide fidelity bonds in amounts determined by the Board for employees or agents who handle funds for the council.

(d) Prior to any expenditure of funds, the Board shall submit its annual budget to the Commissioner for approval. The department shall act on the Board's budget submission within 45 days of the department's receipt of the submission.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202142
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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SUBCHAPTER C. PRODUCER ASSESSMENTS

4 TAC §§90.30 - 90.38

Chapter 90, Subchapter C, is proposed under Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 41.

§90.30. Maximum Assessment Rate.

(a) The maximum assessment rate shall be the rate approved by the applicable vote of grain producers as set forth in Subchapter I, Chapter 41 of the Texas Agriculture Code. The Board may not exceed this rate without obtaining approval of the state's grain producers, with such approval being subject to the requirements of the initial referendum approval set forth in Subchapter I, Chapter 41 of the Texas Agriculture Code.

(b) The Board will determine the applicable assessment rate to be used by grain buyers each year. The current assessment rate shall at no time exceed the maximum assessment rate approved by the state's grain producers in the initial referendum or in subsequent votes. The proposed maximum assessment rate is 0.6% of the final sales price of the grain. The Board shall provide the current assessment rate on its public website for all grain buyers to be able to access, or through other reasonable means available to the Board.

§90.31. Assessment Calculation.

The amount of the producer assessment, as set by the Board, shall be calculated using the final sales price of the grain, including all premiums and discounts for moisture, quality, variety, or any other characteristic of the grain. The producer assessment shall be calculated before the deduction of commodity Board assessments, storage, drying, cleaning, or any other service charge.

§90.32. Notice to Grain Buyers.

The secretary of the Board, shall notify each known grain buyer in the state by certified mail, and shall make reasonable efforts to notify all other grain buyers in the state by registered or certified mail, by electronic transmission of information, by publication in grain industry trade magazines or newsletters, or by publication in newspapers of general circulation, of the duty to collect the assessment. The initial notification shall be sent to the grain buyers within 30 days of the certification of the referendum results. The notice shall describe the manner in which the assessment is to be collected, and shall list the date on or after which the grain buyer is to begin collecting the assessment. Following the initial notification, the secretary of the Board shall submit annual notices to each grain buyer so long as the Board determines an assessment shall be collected.

§90.33. Grain Buyer Collection.

(a) Beginning upon receipt of the notification described in §90.32 of this subchapter (relating to Notice to Grain Buyers) and continuing until such time as the board gives notice otherwise, each grain buyer within the state, at the first point of sale, shall collect the assessment. The grain buyer shall collect the assessment by deducting the applicable percentage from the final sales price of the grain or from any funds advanced for that purpose.

(b) As set forth in this section, a grain buyer may retain a portion of the assessment collected, to cover the grain buyer's administrative costs in collecting the assessment. The allowable administrative cost shall be set by the Board annually. The secretary of the Board will notify the grain buyers in the state of the administrative cost that may be retained. Acceptable methods of notification include U.S. mail, facsimile, electronic mail, or posting to the Board's public website. The buyer shall select its preferred method for receiving notifications, and notify the Board upon remittance of its first quarterly assessment.

(c) The assessment funds submitted by the buyer shall be accompanied by a remittance form, with such form to be provided by the Board. The buyer shall clearly indicate on the remittance form the total amount of grain purchased that quarter, the total price paid for grain that quarter, the total assessment collected and remitted to the Board for that quarter, and the dollar amount kept by the grain buyer to cover the grain buyer's administrative costs pursuant to subsection (b) of this section.

§90.34. Remittance of Assessment.

(a) Each grain buyer shall, no later than the 10th day of each quarter of the calendar year, remit to the Board the producer assessments collected during the previous quarter, along with a remittance form provided by the Board and completed by the grain buyer, to the treasurer of the Board. In the event a grain buyer does not purchase any grain in a particular quarter and therefore, collects no assessment dollars, the buyer shall submit to the Board a quarterly remittance form indicating no grain transactions occurred during that quarter. Failure to submit such a form could lead the Board to investigate the grain buyer for failure to comply with the assessment.

(b) A grain buyer shall report to the Board any change in the information submitted on the remittance form within thirty (30) days of the quarterly remittance.

§90.35. Grain Producer Reporting.

Annually, each grain producer who has submitted grain assessments to the Board through a grain buyer shall submit a producer information report to the Board on a form to be provided by the Board. The form shall contain the following information for each producer: name, address, annual assessment amount(s) remitted, tax identification number for each producer; and, the names of all grain buyers that the producer delivered grain to in the past year. The form shall be submitted to the Board by March 15 each year, for all grain sales that occurred and corresponding assessments that were submitted during the Board's prior fiscal year (February 1 to January 31). Each grain producer shall also submit all invoices, settlement sheets, or other industry accepted documents issued by grain buyers during the past year, to verify that the producer submitted grain to the grain buyers that are listed on the producer information report form. The Board will keep this information in a permanent database that will be utilized by the Board in administering this program.

§90.36. Refunds.

(a) Board determination. Annually, the Board will review its budget for the next year and its current financial status, and based on that review, will determine whether or not to issue refund allotments based on prior years' producer assessment submissions. In any event, if the Board has determined that the Board's financial account is not sufficient to pay refund allotments and maintain a minimum fund balance, as defined in §90.22 of this chapter (relating to Management of Budget), the Board may not issue refund allotments. For any producer who files a refund request with the Board, and the Board determines that refund allotments are not to be issued at the time of the request, the producer shall remain eligible to file an indemnity claim with the Board until a refund allotment is issued to the producer, pursuant to the growers' request.

(b) Order of payment.

(1) If the Board has determined to issue refund allotments under subsection (a) of this section, the date of a producer refund request, if any, shall not give that refund request priority. All payments shall be made in the following manner. Upon the Board's initial determination to issue refund allotments, the Board will refund the assessment paid by all grain producers who participated during the initial year of the program. The Board will, on an annual basis, continue to determine whether or not to issue refund allotments. Producers eligible for refund allotments will be determined based on previously submitted assessments and producer data collected by the Board. Board-initiated refunds to all eligible producers made under this section shall not affect a producer's eligibility for future indemnity payments.

(2) Refund allotments in the initial, and any subsequent years, shall be issued on a pro rata basis within the assessment year then subject to the refund allotment, provided that the oldest outstanding assessment year, or partial year, shall be entitled to priority in payment of refund allotments. Therefore, using the data maintained in the Board's permanent database, the Board will identify the producers that submitted assessments during the year in question and are, therefore, eligible for the refund allotment. The Board shall exercise its discretion in determining the exact amount of the refund allotment; the Board may determine that the refund allotment payment to each eligible producer is equal to that producer's pro-rata share of one year's assessment dollars, a partial year's assessment dollars, or multiple years' assessment dollars. Each subsequent determination by the Board, regardless of when made, to issue refund allotments shall be made in the same manner.

(c) Payment suspension. Following the Board's initial determination to issue refund allotments and subsequent distribution of same, the Board may, at any time, decide to suspend any further refund allotment payments if issuing such payments would cause the Board's deposit account to fall below its minimum fund balance. All refund allotment payments shall remain suspended until such time as the Board determines that its deposit account is sufficient to pay one full year of refund allotments and maintain a minimum fund balance, and refund allotments will continue in accordance with this subsection.

§90.37. Discontinuance of Assessment.

If in such case a referendum is held for discontinuing of assessment and the commissioner of agriculture verifies the results in favor of discontinuance, then the assessment collection shall become void immediately. All grain buyers shall be notified by registered or certified mail by the Board within 10 days to discontinue assessment collection. The Board will submit to the commissioner within 90 days a plan of disbandment. Books will be audited by a state auditor and will be filed with the commissioner of agriculture.

§90.38. Restrictions on Use of Producer Assessments.

(a) General statement. Except as otherwise provided in this section, funds assessed or collected by the Board may not be expended to directly or indirectly promote or oppose the election of any candidate for public office or to influence legislation.

(b) Actions to influence legislation. Except as otherwise provided in this section, the term "influence legislation" includes, but is not limited to:

(1) any attempt to affect the opinions of the general public or any segment thereof regarding pending or anticipated legislation;

(2) communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of pending or anticipated legislation;

(3) contacting or urging the public or producers of the commodity covered by the Board to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation;

(4) actively advocating the adoption or rejection of legislation by filing formal comments in support of or in opposition to pending or anticipated legislation; or

(5) any communication with members made for the purpose of encouraging members or producers to do any of the actions identified in paragraphs (1) - (4) of this subsection.

(c) Actions not influencing legislation. The term "influence legislation" does not include the following:

(1) the development and recommendation to the legislature of amendments to Texas Agriculture Code, Chapter 41;

(2) communication to appropriate government officials of information relating to the conduct, implementation, or results of pro-

motion, research, consumer information, or industry information activities under the Texas Agriculture Code, Chapter 41;

(3) any action designed to market a commodity or commodity products directly to a foreign government or political subdivision thereof;

(4) making available to the public or producers the results of nonpartisan analysis, study, or research;

(5) providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof, including appearances before any such body, committee or subdivision, in response to a request by such body, committee or subdivision, as the case may be;

(6) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties or tax-exempt status;

(7) communications between the Board and producers of the commodity represented by the Board with respect to legislation or proposed legislation of direct interest to the organization and such producers, other than communications described in subsection (b) of this section;

(8) any communication with a government official or employee, other than a communication with a member or employee of a legislative body where such communication would otherwise constitute the influencing of legislation; and

(9) publication of newsletter articles regarding pending legislative issues of interest to members or producers which contain neutral, factual reports.

(d) Promoting or opposing election of candidates for public office. Activities that constitute promoting or opposing election of candidates for public office include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(e) Prohibition against indirect funding of actions to influence legislation or promoting or opposing the election of candidates for public office.

(1) Entities and individuals receiving funding from a commodity Board organized under the Texas Agriculture Code, Chapter 41, shall not use any such funds to influence legislation, as defined in this section, or for supporting or opposing election of a candidate for public office.

(2) Producer assessments may not be used to fund research whose results are to be utilized solely to influence legislation, as that term is defined in this section.

(f) Definition of "legislation." The term "legislation" as used in this section includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any state legislature, any local council, or similar governing body, or by the public in a constitutional amendment or other similar procedure, including Acts providing appropriations to state or federal entities.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202143

Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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SUBCHAPTER D. CLAIMS

4 TAC §§90.40 - 90.44

Chapter 90, Subchapter D, is proposed under Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 41.

§90.40. Initiation of Claim.

(a) Eligibility and Filing Date. A grain producer who has satisfied the requirements of Texas Agriculture Code, §41.208, subsections (a) and (b), may file an indemnification claim with the Board. A claim must be filed with the Board within 60 days of the claim initiation date. Eligible claims are limited to those claims for losses of grain where the grain was delivered to the grain buyer not more than 1 year before the applicable claim initiation date.

(b) Claim Requirements. In order to be accepted by the Board as a complete claim ready to be reviewed, a producer must submit the following to the Board:

(1) A completed claim form. Claim forms shall be made available on the Board's website, and the Board shall also provide a claim forms to any producer who requests it. The claimant must indicate the type of financial failure that has occurred to give rise to the claim. If the financial failure is due to a buyer's bankruptcy filing or other judicial procedure, the claimant must also provide the Board with the case name, number, date of filing the proceeding, and location of filing.

(2) Delivery Documentation. A claimant must provide the Board with all necessary documentation to show that grain was delivered to the buyer, and no payment has been issued. This may be in the form of scale tickets, warehouse receipts, or other similar documentation that is generally used and accepted in the grain industry. The documents submitted must provide, at a minimum, the following information: date of delivery, type of grain, amount delivered, person delivering grain, and any quality, or grade, information that the producer may have.

(3) Pricing Documentation. A claimant must supply the Board with copies of any contracts or other documentation that shows the price at which the grain was sold. In the event the submitted documentation indicates pricing based on a figure or system other than market price, all documents must be signed by both the producer and the buyer in order to be considered by the Board.

(4) Court Filings. If the claim is based on a buyer's bankruptcy filing or other judicial procedure, the claimant must also provide the Board with copies of all notices and other court documents that the claimant has received in connection with the judicial proceeding. In addition, the claimant must continue to immediately provide the Board with all subsequent notices and other court documents that the claimant may receive after filing the initial claim with the Board; such documentation must be filed with the Board upon receipt by the claimant.

§90.41. Claim Review and Determination.

Upon receipt of a completed claim, the Board will review all claim materials and will conduct an investigation to determine the validity of the claim. The Board shall make a determination as to whether to approve or deny the claim within a reasonable time frame from receipt of all claim materials. Within 30 days following the Board's final determination, the Board shall issue notification to the claimant of the Board's decision. If the indemnification claim has been approved, the Board shall also remit payment to the claimant at this time, depending on availability of funds.

§90.42. Denial of Claim.

(a) The Board may deny a grain producer's claim in whole, or in part, for those reasons listed in Texas Agriculture Code, §41.209(f), and a denial may also be based on the following factors:

(1) The producer knowingly delivered grain to a grain buyer that has failed to comply with Texas Agriculture Code, Chapter 41, Subchapter I.

(2) The producer failed to act in accord with standard industry practices, and as determined by the Board, such failure prevents the producer from qualifying for indemnification under Texas Agriculture Code, Chapter 41.

(3) The producer did not make a reasonably diligent attempt to secure payment from the grain buyer.

(b) Any producer whose claim has been denied by the Board may appeal that decision of the Board, according to the procedures outlined in Subchapter E of this chapter (relating to Appeals, Remedies).

§90.43. Award.

(a) For all claims that are approved by the Board, the Board will determine the amount of the indemnification award, based on the Board's current operating budget, and the numbers of claims that are filed with the Board based on the event of financial failure. The Board may award the claimant up to 90% of the value of the grain, less the value of the assessment submitted by the producer for that grain, delivered to the buyer but not paid for.

(b) The value of the grain will be determined by the Board, based on the following.

(1) For all grain that was delivered to the buyer under a grain contract:

(A) for all contracts where the price was specified, and the grain has been sold by the buyer but no payment has been issued to the claimant, the value of the grain shall be the contract price of the grain, less customary deductions, as established by the claimant's complete indemnification claim filed with the Board;

(B) for fixed basis contracts where the underlying futures price has not been fixed, the value of the grain shall be that price on the date of the close of the futures contract denoted in the contract on the claim initiation date plus or minus the cash basis as set out in the contract, less customary deductions, as established by the claimant's complete indemnification claim filed with the Board;

(C) for futures only contracts that have been priced in the futures market but have not had the cash basis fixed, the value of the grain shall be the fixed futures price, plus or minus the cash basis at the delivery point on the claim initiation date, less customary deductions, as established by the claimant's complete indemnification claim filed with the Board;

(D) for all other types of contracts (e.g., cash basis, futures closing price, local cash price, or other pricing mechanism), the value of the grain will be established by the Board, FOB the delivery point on the claim initiation date, unless a specific date is provided in the contract.

(2) For all grain that was delivered to the buyer without a contract, and the grain has not been sold by the buyer, the value of the grain shall be the value of the grain FOB the delivery point as of the claim initiation date. The Board will establish the value, considering the following factors.

(A) All futures prices will be the futures price as of the close of business on the claim initiation date, with prices for each commodity based on the following respective exchanges, and the final price determined by taking into consideration and including all local basis adjustments applicable to each commodity:

(i) corn--Chicago Board of Trade;

(ii) wheat--Kansas City Board of Trade;

(iii) sorghum--Chicago Board of Trade, Corn Board;

(iv) soybeans--Chicago Board of Trade.

(B) For grain that is not priced, the value of the grain shall be the local producer's cash price net of all discounts, as determined by the Board, as of the claim initiation date. The amount of the producer cash price, as set by the Board, shall be calculated using the gross sales price of the grain, net of all premiums and discounts for moisture, quality, variety, or any other characteristic of the grain.

(C) Recognizing that some locations may not have sufficient volume or liquidity to determine a local cash price or basis adjustment, the Board will use its best efforts to determine a fair price for the delivery point based on available information.

§90.44. Subrogation.

(a) Grain Buyer. In accordance with Texas Agriculture Code, §41.210, in the event the Board approves and pays an indemnification claim, the Board is subrogated to all rights of the grain producer against the grain buyer whose financial failure gave rise to the grain producer's indemnification claim.

(b) Other organizations. In addition, in accordance with Texas Agriculture Code, §41.210, in the event the Board approves and pays an indemnification claim, the Board is subrogated to all rights of the grain producer against any other entity authorized to submit a payment to the producer for the grain buyer's financial failure causing the producer's loss, and giving rise to the indemnification claim.

(c) Limitation of Board. In any reimbursement event, the Board's subrogation rights are limited to the amount the Board paid to the grain producer in an indemnification claim award, due to the financial failure that gave rise to the grain producer's claim.

(d) Reinsurance. The Board shall have the authority to investigate the availability and, if available at a reasonable price as determined by the Board, purchase reinsurance contracts or policies to mitigate the risk that, despite the authorization for the Board to be reimbursed and subrogated, the Board will suffer severe financial losses in the event of multiple financial failure events in any given year.

(e) Funds. Any reimbursement and subrogation funds that may be recovered under Texas Agriculture Code, §41.210 and this chapter shall be deposited in the Board's depository bank.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202144
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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SUBCHAPTER E. APPEALS, REMEDIES

4 TAC §90.50, §90.51

Chapter 90, Subchapter E, is proposed under Texas Agriculture Code, §41.211, which provides the Texas Grain Producer Indemnity Board with the authority to adopt rules to administer its duties under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 41.

§90.50. Administrative Review.

(a) Filing of request.

(1) Any person who believes they have been aggrieved in connection with a determination made by the Texas Grain Producer Indemnity Board (the Board) under Subchapter D of this chapter (relating to Claims) may file a request for administrative review by the Texas Department of Agriculture (the department).

(2) A request must be in writing and received by the department within 90 days after the action of which the person is complaining occurred. Formal requests must comply with the following requirements, and shall be resolved in accordance with the procedure set forth below. Copies of the request and any supporting documentation must be mailed or delivered by the requesting party to the department and the Board.

(b) Contents of request. A request filed under this section must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection, including an identification of the issue or issues to be resolved;

(3) a precise statement of the relevant facts;

(4) argument and authorities in support of the allegations made;

(5) any supporting documentation available; and

(6) a statement that a copy of the request has been mailed or delivered to the Board.

(c) Informal Review.

(1) Once a request is received by the department, it shall be forwarded to the Department's Office of General Counsel for review.

(2) The General Counsel, or his or her designee, shall have the authority, prior to appeal to the commissioner or her designee, to settle and resolve the complaint that is the subject of the request, and may solicit additional information regarding the matters alleged in the request for review from the requester, the Board or any other relevant party. Copies of any additional information received shall be provided to both the requester and the Board.

(3) If the issues raised in the request are not resolved by mutual agreement, the General Counsel will issue a written determination on the request for review as follows.

(A) If the General Counsel determines that no violation of rules or statutes has occurred, he or she shall so inform the requesting party and the Board by letter, setting forth the reasons for the determination.

(B) If the General Counsel determines that a violation of the rules or statutes has occurred, he or she shall so inform the requesting party and the Board by letter, setting forth the reasons for the determination and the appropriate remedial action.

(4) If the General Counsel's determination is not appealed, that determination shall serve as the final agency determination on the complaint.

(d) Appeal to Commissioner.

(1) The General Counsel's determination on a complaint may be appealed to the Commissioner by the requester, or his or her designee, or the Board. An appeal of the General Counsel's determination must be in writing and must be received by the department no later than 15 days after the date of the General Counsel's determination. The appeal shall include specific reasons why the requester or the Board disagrees with the General Counsel's determination. Copies of the appeal must be mailed or delivered by the party appealing to the other party.

(2) The Commissioner, or his or her designee, shall review the request, any supporting documentation, the General Counsel's determination, and the appeal and issue a determination on the request. The appeal shall be limited to review of the General Counsel's determination and documentation presented by parties in support of their positions.

(3) The Commissioner's determination of the appeal shall be the final administrative action of the agency and is subject to judicial review under Chapter 2001, Government Code.

(e) Appropriate remedial actions. If the department, or the Commissioner on appeal, determines that the Board acted in a manner that warrants action by the department, the department may prescribe corrective action to be carried out by the Board. The department is not authorized to award monetary damages to a person filing a request under this section.

§90.51. Penalty and Remedies.

If any grain buyer violates Texas Agriculture Code, Chapter 41 by failing to promptly remit assessments, the commissioner is authorized to suspend, revoke, or deny a department issued license that the grain buyer may hold, and in any case in which he determines, after opportunity for a hearing, that there has been violation of or failure to comply with Texas Agriculture Code, Chapter 41.

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

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202145
Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES
SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) proposes an amendment to §22.246, relating to Administrative Penalties. The proposed amendment, coupled with substantive amendments proposed to §25.503, establishes procedures to return excess revenues to affected wholesale electricity market participants when the commission has ordered disgorgement of those excess revenues in an enforcement proceeding. House Bill (HB) 2133 requires the commission to adopt rules to establish such a procedure. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 40073 is assigned to this proceeding.

Evan Rowe, Deputy Division Director of the Oversight and Enforcement Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Rowe has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be that the authority granted to the commission by HB 2133, including the return of improperly garnered excess revenue to affected wholesale electric market participants, will be reflected in the commission's substantive rules. There are no economic costs to persons who are required to comply with the amendment. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility analysis is required.

Mr. Rowe has also determined that for each year of the first five years the proposed amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 10:00 a.m. on Monday, July 9, 2012. The request for a public hearing must be received by Thursday, June 28, 2012.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before Monday, June 11, 2012. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted on or before Monday, June 25, 2012. Comments should be organized in a manner consistent with the organization of the amended rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 40073.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Specifically, PURA §15.023 requires the commission to order disgorgement of excess revenues acquired by a market participant by violation of PURA §39.157 and grants the commission discretion to order disgorgement of excess revenues for wholesale electric market violations of other PURA sections, commission rules, or wholesale electricity market protocols. Also, PURA §15.024 limits the parties to an administrative penalty proceeding to the person alleged to have committed the violation and the commission. PURA §15.025 requires the commission to adopt rules proscribing the return of disgorged excess revenues to affected wholesale electric market participants, which shall be used to reduce costs or fees incurred by retail electric customers. PURA §35.004 requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive. PURA §39.001 establishes the legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry. PURA §39.101 establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and directs the commission to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity. PURA §39.151 requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures. PURA §39.157 directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses. PURA §39.356 allows the commission to revoke certain certifications and registrations for violation of an independent organization's procedures, statutory provisions, or the commission's rules. Finally, PURA §39.357 authorizes the commission to impose administrative penalties in addition to revocation, suspension, or amendment of certificates and registrations.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 15.024, 15.025, 35.004, 39.001, 39.101, 39.151, 39.157, 39.356, and 39.357.

§22.246. Administrative Penalties.

(a) Scope. This section is intended to address enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

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

(1) Affected Wholesale Electric Market Participants--An entity, including a retail electric provider (REP), municipally owned utility (MOU), and electric cooperative, that sells energy to retail cus-

tomers and served load during the period of the violation, excluding any affiliate of the person from which excess revenue is disgorged.

(2) Excess Revenue--As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) [~~(1)~~] Executive director--The executive director of the commission or the executive director's designee.

(4) [~~(2)~~] Person--Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) [~~(3)~~] Violation--Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.

(6) [~~(4)~~] Continuing violation--Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) Amount of administrative penalty.

(1) Each day a violation continues or occurs is a separate violation for which an administrative [~~a~~] penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $25,000 per day, provided that an administrative [~~a~~] penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

(3) The amount of the administrative penalty shall be based on:

(A) - (F) (No change.)

(d) (No change.)

(e) Report of violation or continuing violation. If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty and, if applicable pursuant to §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report. Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice must include:

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

(C) a statement recommending disgorgement of excess revenue, if applicable, pursuant to §25.503 of this title;

(D) [~~(C)~~] a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;

(E) [~~(D)~~] a copy of the report issued to the commission pursuant to this subsection; and[~~,~~]

(F) [~~(E)~~] a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(f) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) (No change.)

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (e)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.

(C) - (E) (No change.)

(2) Payment of administrative penalty and/or disgorged excess revenue. Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, the amount of disgorged excess revenue, or both the occurrence of the violation or continuing violation and the amount of the penalty or disgorged excess revenue, if applicable.

(g) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue, if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

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

(h) Hearing. If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1) - (5) of this subsection.

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

(3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

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

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue [~~a penalty~~];

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

(5) (No change.)

(i) Parties to a proceeding. The parties to a proceeding relating to administrative penalties or disgorgement of excess revenue shall be limited to the person and the commission, including the independent market monitor.

(j) Distribution of Disgorged Excess Revenues. Disgorged excess revenues shall be remitted to an independent organization, as defined in PURA §39.151. The independent organization shall distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct staff to open a subsequent proceeding to address those issues. No later than 90 days after the disgorged excess revenues are remitted to the independent organization the monies shall be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization shall notify the commission of the date by which the funds will be distributed. The independent organization shall include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues and any other information the commission orders.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202172
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 936-7223

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.503

The Public Utility Commission of Texas (commission) proposes an amendment to §25.503, relating to Oversight of Wholesale Market Participants. The proposed amendment, coupled with procedural amendments proposed to §22.246, establishes procedures to return excess revenues to affected wholesale electricity market participants when the commission has ordered disgorgement of those excess revenues in an enforcement proceeding. House Bill (HB) 2133 requires the commission to adopt rules to establish such a procedure. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 40073 is assigned to this proceeding.

Evan Rowe, Deputy Division Director of the Oversight and Enforcement Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Rowe has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the return to electricity market participants of excess revenues improperly garnered by a market participant by violating PURA, commission rules, or market protocols. It is difficult to estimate the magnitude or frequency of such violations and the resulting amount of disgorged excess revenues. Therefore, quantifying a specific benefit amount is difficult. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the proposed section. These costs are associated with the return of excess revenues to wholesale electricity market participants pursuant to a commission order finding the person in violation of a statute, rule or protocol and ordering disgorgement of those excess revenues, which are likely to vary from business to business, and are difficult to ascertain.

Mr. Rowe has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 at 10:00 a.m. on Monday, July 9, 2012. The request for a public hearing must be received by Thursday, June 28, 2012.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before Monday, June 11, 2012. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted on or before Monday, June 25, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 40073.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure. Specifically, PURA

§15.023 which requires the commission to order disgorgement of excess revenues acquired by a market participant by violation of PURA §39.157 and grants the commission discretion to order disgorgement of excess revenues for wholesale electricity market violations of other PURA sections, commission rules, or wholesale electricity market protocols. Also, PURA §15.024 limits the parties to an administrative penalty proceeding to person alleged to have committed the violation and the commission. PURA §15.025 requires the commission to adopt rules to return excess revenues ordered disgorged to affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. PURA §35.004 requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive. PURA §39.001 establishes the legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry. PURA §39.101 establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and directs the commission to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity. PURA §39.151 requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures. PURA §39.157 directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses. PURA §39.356 allows the commission to revoke certain certifications and registrations for violation of an independent organizations procedures, statutory provisions, or the commission's rules. Finally, PURA §39.357 authorizes the commission to impose administrative penalties in addition to revocation, suspension, or amendment of certificates and registrations.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 15.023, 15.024, 15.025, 35.004, 39.001, 39.101, 39.151, 39.157, 39.356, and 39.357.

§25.503. Oversight of Wholesale Market Participants.

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

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

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

(4) Excess Revenue--Revenue in excess of the revenue that would have occurred absent a violation of PURA §39.157 or this section.

(5) [~~(4)~~] Market entity--Any person or entity participating in the ERCOT-administered wholesale market, including, but not limited to, a load serving entity (including a municipally owned utility and an electric cooperative), a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, ERCOT, and any entity conducting planning, scheduling, or operating activities on behalf of, or controlling the activities of, such market entities.

(6) [~~(5)~~] Market participant--A market entity other than ERCOT.

(7) [~~(6)~~] Resource--Facilities capable of providing electrical energy or load capable of reducing or increasing the need for electrical energy or providing short-term reserves into the ERCOT system. This includes generation resources and loads acting as resources (LaaRs).

(d) - (k) (No change.)

(l) Investigation. The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market entity has violated any provision of this section.

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

(4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues shall comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff shall include as part of its prima facie case:

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

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

(m) Remedies. If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues shall be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202177
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER E. FINANCIAL LITERACY TRAINING

19 TAC §§4.101 - 4.104, 4.110 - 4.115

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board proposes the repeal of §§4.101 - 4.104 and 4.110 - 4.115, concerning Rules Applying to All Institutions of Higher Education in Texas (Financial Literacy Training). The purpose of this repeal is to separate the Learning Outcomes sections and the Financial Literacy sections. These two areas, which were unintentionally grouped together in the same subchapter, should be in separate subchapters.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of repealing the these sections.

Dr. Stephenson has also determined that for the first five years the public benefit expected as a result of this change is to clearly separate the two subchapters because they are different policies and should be identified in separate subchapters. This is a technical change to the rules. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed repeal may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeals are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas, and also under Texas Education Code, Chapter 51, Subchapter F, §51.305, which provides the Coordinating Board with the authority to establish rules for general academic teaching institutions to offer training in personal financial literacy.

The repeals affect the Texas Education Code, §51.305 and Chapter 61, Subchapters G and H.

§4.101. Purpose.

§4.102. Authority.

§4.103. Definitions.

§4.104. Measurable Learning Outcomes for Undergraduate Courses.

§4.110. Purpose.

§4.111. Authority.

§4.112. Definitions.

§4.113. Topics for Financial Literacy Training.

§4.114. Implementation.

§4.115. Certification.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202196
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER E. LEARNING OUTCOMES FOR UNDERGRADUATE COURSES

19 TAC §§4.101 - 4.104

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.101 - 4.104, concerning Learning Outcomes for Undergraduate Courses, concerning Rules Applying to All Public Institutions of Higher Education. These sections were originally adopted in November 2011. This is a technical change to separate the Learning Outcomes sections and the Financial Literacy sections. These two areas were unintentionally grouped together in the same subchapter. The intent of the subchapter is to foster a transparent student learning environment and to facilitate the transfer of credits among all institutions of higher education. Each public institution of higher education is to adopt measurable learning outcomes for each undergraduate course offered by the institution and make them available for public inspection.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposed new sections.

Dr. Stephenson has also determined that for the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to improve accountability to students, administrators, and the general public that undergraduate courses in public institutions of higher education are meeting their educational goals. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the new sections may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas. The proposed new sections are in response to a provision enacted by the 82nd Texas Legislature, Regular Session (Senate Bill 1726), as codified in the Texas Education Code, Chapter 51, §51.96851.

The new sections affect the Texas Education Code, Chapter 61, Subchapters G and H.

§4.101. Purpose.

To foster a transparent student learning environment and to facilitate the transfer of credits among all institutions of higher education, each

public institution of higher education shall identify and adopt measurable learning outcomes for undergraduate courses (exclusive of independent studies, labs, practicums, or discussion sections) offered by the institution.

§4.102. Authority.

Texas Education Code, Chapter 51, Subchapter Z, §51.96851 and §51.974(g) authorize the Texas Higher Education Coordinating Board to adopt rules necessary to administer these sections. The Texas Education Code, §61.051, describes the Board's role in the Texas system of higher education.

§4.103. Definitions.

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

(1) Institutions of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(2) Measurable Learning Outcomes--The knowledge and skills a student is expected to acquire or achieve upon completion of a course. Measurement may be quantitative or qualitative, depending upon the subject matter of the course.

(3) Undergraduate Course--Any lower- or upper-division credit course offered to five or more students. This includes on-campus, off-campus, distance education, and dual-credit courses (including those taught on high school campuses). It excludes courses with highly variable subject content that are tailored specifically to individual students, such as Independent Study and Directed Reading courses. It excludes laboratory, practicum, or discussion sections that are intrinsic and required parts of larger lecture courses and are directly supervised by the same instructor(s) of record for those large courses.

§4.104. Measurable Learning Outcomes for Undergraduate Courses.

(a) Each public institution of higher education shall identify, adopt, and make available for public inspection measurable learning outcomes for undergraduate courses (exclusive of independent studies, labs, practicums, or discussion sections) offered by the institution.

(b) Statements of the measurable learning outcomes shall be kept on file for at least two years after the course is taught and made available for public inspection upon request to the Provost's office of each institution.

(c) If the institution is in compliance with Subchapter N, §§4.225 - 4.228 of this chapter (relating to Public Access to Course Information), then the institution is also in compliance with this section since learning outcomes are required to be a part of each course syllabus posted on the institution's website.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202197
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER L. FINANCIAL LITERACY TRAINING

19 TAC §§4.208 - 4.213

The Texas Higher Education Coordinating Board proposes new §§4.208 - 4.213, concerning Rules Applying to All Institutions of Higher Education in Texas. These sections were originally adopted in February 2012. This is a technical change to separate the Learning Outcomes sections and the Financial Literacy sections. These two areas were unintentionally grouped together in the same subchapter. The intent of this subchapter is to require general academic teaching institutions to offer training in personal financial literacy to students of the institution. The topics that may be covered by the training: budgeting, managing debt and credit, saving and investing, preventing identity theft, and retirement planning. This course may be offered online.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposed sections.

Dr. Stephenson has also determined that for the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be that the training will provide students with the knowledge and skills necessary as self-supporting adults to make important decisions relating to personal financial matters. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomment@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, Chapter 51, Subchapter F, §51.305, which provides the Coordinating Board with the authority to establish rules for general academic teaching institutions to offer training in personal financial literacy.

The new sections affect the Texas Education Code, Chapter 51, Subchapter F.

§4.208. Purpose.

This subchapter establishes rules for general academic teaching institutions to offer training in personal financial literacy to provide students of the institution with the knowledge and skills necessary as self-supporting adults to make important decisions relating to personal financial literacy matters.

§4.209. Authority.

This subchapter relates to Texas Education Code, Chapter 51, Subchapter F, §51.305, which requires general academic teaching institutions to offer personal financial literacy training to students of the institution.

§4.210. Definitions.

The following word and term, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise: General Academic Teaching Institution--An institution of higher education as defined in Texas Education Code, §61.003.

§4.211. Topics for Financial Literacy Training.

The topics to be covered in the training shall include, but are not limited to, budgeting, managing debt and credit, saving and investing, preventing identity theft, and retirement planning. The training may be offered in any format an institution deems appropriate, including online.

§4.212. Implementation.

The personal financial literacy training shall be made available to students of a general academic teaching institution no later than the 2013 fall semester.

§4.213. Certification.

A certification must be submitted to the Coordinating Board documenting how personal financial literacy training will be offered at the general academic teaching institution. Certification must be submitted no later than the 2013 fall semester.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202198
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §5.46

The Texas Higher Education Coordinating Board proposes an amendment to §5.46, concerning Criteria for New Doctoral Programs, by adding alternative criteria for meeting the undergraduate success measure standard. The intent of the amendment is to bring consistency across the Coordinating Board rules and staff procedures for the approval of new doctoral programs. The amendment would specify the alternative undergraduate success measures that an institution must meet in order to satisfy §5.24(b)(5) and to be in line with §5.46(15) of Coordinating Board rules adopted in January 2011. If an institution's six-year baccalaureate graduation rate is below the state average minus The University of Texas at Austin and Texas A&M University, new doctoral programs may still be considered if the institution meets at least two of three alternative criteria.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the amendment.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be to inform institutions of all of their available options to meet the undergraduate success measures as part of their applications for new doctoral programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051(e), which provides the Coordinating Board with the authority to approve new degree programs at public postsecondary institutions operating in Texas.

The amendment affects the Texas Education Code, Chapter 61, Subchapter C.

§5.46. Criteria for New Doctoral Programs.

(1) - (14) (No change.)

(15) Essential Criterion for New Doctoral Degree Programs.

(A) An essential criterion for the approval of a new doctoral degree program shall be that the institution's most recent six-year baccalaureate graduation rate should equal or exceed the most recent annual statewide average six-year baccalaureate graduation rate. For the purposes of this rule, the six-year baccalaureate graduation rates at Texas A&M University and The University of Texas at Austin shall not be included in the calculation of the state average. The statewide average six-year baccalaureate graduation rate shall be calculated using the six-year baccalaureate graduation rates of general academic teaching institutions only. An institution may submit documentation in support of an exception to this criterion based upon special circumstances, including but not limited to significant external funding, compelling regional need, and institutional mission.

(B) If an institution's six-year baccalaureate graduation rate is below the state average as described, new doctoral programs may still be considered if the institution meets at least two of the following three alternative criteria:

(i) The percent of change in the ratio of baccalaureate degrees awarded to the total undergraduate enrollment is at or above the statewide percent of change over the most recent three years, and the institution has had an increase in productivity over the most recent three years.

(ii) The percent of change in the total number of baccalaureate degrees awarded is at or above the statewide percent of change for the most recent three years, and the institution has had an increase in productivity over the most recent three years.

(iii) The percent of change in the number of baccalaureate degrees awarded to "at risk" students as defined in Chapter 13, Subchapter I, §13.150 of this title (relating to Performance Incentive Funding) is at or above the state percent of change for the most recent three years, and the institution has had an increase in productivity over the most recent three years.

(C) If the institution meets at least two of the three alternative criteria, all applications for new doctoral programs must include an action plan to improve the six-year graduation rate and the unmet

alternative criterion. If additional new doctoral programs are proposed within the same period during which the graduation rate data are effective, applications must include an update on the effectiveness of the initial action plan. A revised action plan is required for new doctoral program applications in every year for which there is new graduation rate data published by the Coordinating Board.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202199
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 26, 2012
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1201, §103.1203

The Texas Education Agency proposes amendments to §103.1201 and §103.1203, concerning disciplinary alternative education programs (DAEPs). The sections establish provisions for DAEP standards of operation and the assessment of academic growth for students in DAEPs. The proposed amendments would align rules with statute, limit the number of students assigned to instructional staff, and modify the procedures for the administration of pre- and post-assessments.

Section 103.1201, adopted effective December 14, 2008, implements the Texas Education Code (TEC), §37.008, by establishing in rule minimum standards for the operation of DAEPs. As directed by statute, the section includes provisions relating to student-to-teacher ratios; student health and safety; reporting of abuse, neglect, or exploitation of students; training for teachers in behavior management and safety procedures; and planning for a student's transition from a DAEP to a regular campus. During the recent statutorily required review of rules in 19 TAC Chapter 103, staff identified the need to update §103.1201. The proposed amendment would align the rule with statute and limit the number of students assigned to instructional staff. Technical edits would also be made.

Section 103.1203, adopted effective August 18, 2010, implements the TEC, §37.0082, by establishing in rule school district responsibilities for administering a pre- and post-assessment to assess the basic skills in reading and mathematics for each student in the district's DAEP. In addition, the section requires a school district to provide assessment results to a student's locally assigned campus. The section specifies that procedures for administering this assessment are to be developed and implemented in accordance with local school district policy and specifies that DAEP assessment requirements are in addition to the assessment requirements of the TEC, Chapter 39. During the recent statutorily required review of rules in 19 TAC Chapter 103, staff identified the need to update §103.1203. The proposed amendment would modify the procedures for the administration of pre- and post-assessment results and include a technical edit.

The proposed amendments would have no procedural or reporting implications. The proposed amendments would have no new locally maintained paperwork requirements.

Ann Smisko, associate commissioner for educator leadership and quality, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendments.

Dr. Smisko has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be the clarification of requirements relating to DAEPs and the continued provision of consistent pre- and post-assessment requirements to measure academic growth for students placed in DAEPs for more than 90 days to provide an appropriate level of education. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period for the proposal begins May 11, 2012, and ends June 11, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 11, 2012.

The amendments are proposed under the TEC, §37.008, which authorizes the agency to adopt minimum standards for the operation of disciplinary alternative education programs, and the TEC, §37.0082, which authorizes the commissioner of education to adopt rules necessary to implement the assessment of academic growth of students in disciplinary alternative education programs.

The amendments implement the TEC, §37.008 and §37.0082.

§103.1201. Standards for the Operation of School District Disciplinary Alternative Education Programs.

(a) A disciplinary alternative education program (DAEP) established in conformance with the Texas Education Code (TEC), §37.008, and this section is defined as an educational and self-discipline alternative instructional program[, ~~adopted by local policy,~~] for students in elementary through high school grades who are removed from their regular classes for mandatory or discretionary disciplinary reasons and placed in a DAEP.

(b) Each school district participating in a shared services arrangement (SSA) for DAEP services shall be responsible for ensuring that the board-approved district improvement plan and the improvement plans for each campus required by the TEC, §11.251 and §11.252, include the performance of the DAEP student group for the respective district. The identified objectives for the improvement plans shall include:

(1) student groups served, including overrepresentation of students from economically disadvantaged families, with ethnic and racial representations, and with a disability who receive special education and limited English proficiency services;

(2) attendance rates;

(3) pre- and post-assessment results;

(4) dropout rates;

(5) graduation rates; and

(6) recidivism rates.

(c) A DAEP may be located on-campus or off-campus in adherence with requirements specified in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). For reporting purposes, the DAEP shall use the county-district-campus number of the student's locally assigned campus (the campus the student would be attending if the student was not attending the DAEP).

(d) An individual school district or an SSA may contract with third parties for DAEP services. The district must require and ensure compliance with district responsibilities that are transferred to the third-party provider.

(e) The campus of accountability for student performance must be the student's locally assigned campus, including when the individual school district or SSA contracts with a third party for DAEP services.

(f) Each school district shall provide an academic and self-discipline program that leads to graduation and includes instruction in each student's currently enrolled foundation curriculum necessary to meet the student's individual graduation plan, including special education services.

(1) A student's four-year graduation plan (minimum, recommended, or distinguished achievement--advanced) may not be altered when the student is assigned to a DAEP. A student must be offered an opportunity to complete a foundation curriculum course in which the student was enrolled at the time of removal before the beginning of the next school year, including correspondence or distance learning opportunities or summer school. A district may not charge for a course required under this section.

(2) The school day for a DAEP shall be at least seven hours but no more than ten hours in length each day, including intermissions and recesses as required under the TEC, §25.082(a).

(3) Notwithstanding the TEC, §37.008(a)(3), summer programs provided by the district may serve students assigned to a DAEP in conjunction with other students, as determined by local policy.

(g) A DAEP program serving a student with a disability who receives special education services shall provide educational services that will support the student in meeting the goals identified in the individualized education program [~~(IEP)~~] established by a duly-constituted admission, review, and dismissal [~~(ARD)~~] committee, in accordance with the TEC, §37.004, and federal requirements.

(h) Each school district is responsible for the safety and supervision of the students assigned to the DAEP; however, the immunity from the liability established in the TEC, §22.0511, shall not be impacted.

(1) The certified teacher-to-student ratio in a DAEP shall be one teacher for each 15 students in elementary through high school grades. A district may not enroll more than 15 students per certified teacher in an individual classroom. Elementary grade students assigned to the DAEP shall be separated from secondary grade students assigned to the DAEP. The designation of elementary and secondary will be determined by adopted local policy.

(2) The DAEP staff shall be prepared and trained to respond to health issues and emergencies.

(3) Students in the DAEP shall be separated from students in a juvenile justice alternative education program [~~(JJAEP)~~] and students who are not assigned to the DAEP.

(4) Each district shall establish a board-approved policy for discipline and intervention measures to prevent and intervene against unsafe behavior and include disciplinary actions that do not jeopardize students' physical health and safety, harm emotional well-being, or discourage physical activity.

(i) Staff at each DAEP shall participate in training programs on education, behavior management, and safety procedures that focus on positive and proactive behavior management strategies. The training programs must also target prevention and intervention that include:

(1) training on the education and discipline of students with disabilities who receive special education services;

(2) instruction in social skills and problem-solving skills that addresses diversity, dating violence, anger management, and conflict resolution to teach students how to interact with teachers, family, peers, authority figures, and the general public; and

(3) annual training on established procedures for reporting abuse, neglect, or exploitation of students.

(j) Procedures for each DAEP shall be developed and implemented for newly entering [~~newly-entering~~] students and their parents or guardians on the expectations of the DAEP, including written contracts between students, parents or guardians, and the DAEP that formalize expectations and establish the students' individual plans for success.

(k) The transition procedures established for a student who is exiting a DAEP and returning to the student's locally assigned campus shall be implemented and updated annually as needed. The transition procedures shall include:

(1) an established timeline for the student's transition from the DAEP to the student's locally assigned campus; and

(2) written and oral communication from the DAEP staff to the locally assigned campus during the student's assignment to the DAEP, including the student's educational performance and tasks completed.

§103.1203. Assessment of Academic Growth of Students in Disciplinary Alternative Education Programs.

(a) Each school district shall be responsible for administering a pre- and post-assessment for each student assigned to the district's disciplinary alternative education program (DAEP) for a period of 90 school days or longer as required by the Texas Education Code (TEC), 37.0082. Released state assessments for reading and mathematics for the appropriate grade may be used. A school district may apply for approval of an assessment that includes the Texas essential knowledge and skills [~~Essential Knowledge and Skills (TEKS)~~] for reading and mathematics for the student's assigned grade. The commissioner of education will publish on the Texas Education Agency website a list of assessments approved for use in each school year.

(b) The grade level of an assessment shall be based upon the academic grade completed prior to the student being assigned to a DAEP if placement occurs in the fall or first semester of the academic school year. If placement occurs in the spring or second semester of the

academic school year, the student shall be administered an assessment based on the current grade level.

(c) Each school district shall provide an academic report to the student's locally assigned campus, which shall include the pre- and post-assessment results of the student's basic skills in reading and mathematics, within ten days of the student completing the post-assessment.

(d) Procedures for administering the pre- and post-assessment shall be developed and implemented under the direction of the superintendent [~~in accordance with local school district policy~~].

(e) A student in the district's DAEP must also be assessed under the requirements of the TEC, Chapter 39.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202174
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER C. ADOPTIONS BY REFERENCE

19 TAC §109.41

The Texas Education Agency (TEA) proposes an amendment to §109.41, concerning the *Financial Accountability System Resource Guide.* The section adopts by reference the *Financial Accountability System Resource Guide* as the TEA's official rule. The Resource Guide describes rules for financial accounting in modules for financial accountability and reporting, budgeting, purchasing, auditing, site-based decision making, accountability, data collection and reporting, management, state compensatory education, GASB 34, and dropout audits. The Resource Guide also includes a special supplement module for nonprofit charter school chart of accounts. Public school districts use the Resource Guide to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code (TEC) and other state statutes relating to public school finance. Under §109.41(b), the commissioner of education shall amend the Resource Guide, adopting it by reference, as needed. The Resource Guide, dated January 2010, is available on the TEA website at http://www.tea.state.tx.us/index4.aspx?id=1222.

The proposed amendment to §109.41 would update *Module 4 - Auditing* as a result of recent legislative and authoritative accounting changes and to remove confusing references. While the current amendment is proposed to implement immediate, necessary changes, the *Financial Accountability System Resource Guide* will undergo a further, comprehensive review, which may result in another amendment.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

Nora Hancock, associate commissioner for grants and fiscal compliance, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Dr. Hancock has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins May 11, 2012, and ends June 11, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 11, 2012.

The amendment is proposed under the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The proposed amendment implements the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008.

§109.41. Financial Accountability System Resource Guide.

(a) The rules for financial accounting are described in the official Texas Education Agency publication, Financial Accountability System Resource Guide, dated January 2010 (with *Module 4 - Auditing* updated April 2012), which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The commissioner of education shall amend the Financial Accountability System Resource Guide and this section adopting it by reference, as needed. The commissioner shall inform the State Board of Education of the intent to amend the Resource Guide and of the effect of proposed amendments before submitting them to the Office of the Secretary of State as proposed rule changes.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202173

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 475-1497

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER J. DRIVER RESPONSIBILITY PROGRAM

37 TAC §§15.161 - 15.166

The Texas Department of Public Safety (the department) proposes amendments to §15.161 and §15.162 and proposes new §§15.163 - 15.166, concerning Driver Responsibility Program. This proposal is necessary to reorganize existing language, improve the clarity of Subchapter J, and is required by House Bill 2730 enacted during the 81st Legislative Session and House Bill 588 and House Bill 2851 enacted during the 82nd Legislative Session. The statutory changes required by these bills were effective September 1, 2011.

The amendments to §15.161, concerning General Information, are proposed to conform to the statutory changes of House Bill 2730. Texas Transportation Code, §§708.056, 708.151 and 708.159 were amended to allow the department to reduce points; extend the period before payment is required after the notification of the surcharge assessment; and allow for advance payment of all three years of surcharges; respectively.

Texas Transportation Code, Chapter 708 requires an individual to be assessed a surcharge annually during a 36-month period. The statute was revised to provide an individual the ability to pay all three years in advance. This requires the department to assess all three years up front and discontinue annual surcharge notices. Currently, an individual receives one notice and has 30 days to comply with the surcharge before suspension action. The proposed revisions provide an individual more time to comply before driving privileges are suspended. Furthermore, the proposed revisions allow the department the ability to reduce points accumulated on an individual's record, as required by statutory amendment.

The amendments to §15.162, concerning Surcharge Payments, are proposed to conform to the statutory changes of House Bill 2730 and House Bill 588. Texas Transportation Code, §708.153 and §708.154 were amended to require the costs associated with credit card payments to be paid by the customer and extend the monthly installment agreement periods for payment respectively. Currently, an individual has a limited number of months to pay, which results in higher monthly installment payment amounts. The proposed revision increases the time an individual has to pay and reduces the overall monthly payment amount. The revision for credit card payments was implemented as an operating process in 2010, and any individual paying by credit card also pays associated costs. The language for payments due on the 29th, 30th or 31st of each month is removed as those days are not assigned as due dates.

New §15.163, concerning Military Deployment Deferral Program, is proposed to conform to the statutory changes of House Bill 2851. Texas Transportation Code, §708.106 was added to allow the department to defer payment for active duty military deployed outside the continental United States. Currently, there is not a process available to delay payments for deployed United States Armed Forces personnel. The proposed revision provides a deferral period to allow deployed military personnel to remain in compliance with the law.

New §15.164, concerning Amnesty Program, is the original language from former §15.163(a) and has been moved to reorganize and improve the clarity of Subchapter J. Other than deleting the words amnesty program from the beginning of the section no changes have been made to the original text.

New §15.165, concerning Incentive Program, incorporates language added to Texas Transportation Code, §708.157 by HB 588 which requires the implementation of the department's incentive program. The proposed revisions allow for immediate implementation of the incentive program. The language was also revised to reduce it to one program and streamline the process to match the advance payment revisions in §15.162.

The incentive program will apply only to individuals who are living above 125% and below 300% of the poverty level and pay a one-time reduced amount in full. In 2010, it was estimated that 39% of individuals would be eligible for the incentive program. The estimated fees waived annually would be approximately $23 million. The 2010 estimate is consistent with current department projections under the new proposed rules. The department does not anticipate a revenue gain or loss with the other rule revisions as the changes do not significantly impact the overall process.

New §15.166, concerning Indigency Program, is the original language from former §15.163(c) and has been moved to reorganize and improve the clarity of Subchapter J. Other than deleting the words indigency program from the beginning of the section no changes have been made to the original text.

Denise Hudson, Assistant Director of Finance, has determined that for each year of the first five years the proposal is in effect, there will be a fiscal implication for state government, but no fiscal implication for local government. There is no available data to support the number of individuals who would participate in the proposed reduction programs. Revenue estimates are based on assumptions that a percentage of individuals not currently in compliance and a percentage of individuals already in compliance would enter into the reduction programs. The estimated revenue will change should more individuals not in compliance or individuals already in compliance participate in the reduction programs.

In addition, Ms. Hudson has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this proposal. There are no economic costs to individuals who are required to comply with this proposal. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the revisions will be increased public safety on the roadway by ensuring the license

holder remains in compliance with the Driver Responsibility Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Transportation Code, Chapter 708, §§708.056, 708.105, 708.106, 708.151, 708.153, 708.154, 708.157 and 708.159.

Texas Government Code, §411.004(3) and Transportation Code, Chapter 708, §§708.056, 708.105, 708.106, 708.151, 708.153, 708.154, 708.157 and 708.159, are affected by this proposal.

§15.161. General Information.

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

(c) The department will assess the total annual surcharges for each conviction in a single notice.

(d) [~~(c)~~] An individual who fails to pay the surcharge, including any related costs or fails to enter an installment agreement within 105 [~~30~~] days from the date of the Surcharge Notice will be subject to suspension action.

(e) For each year that an individual does not receive any points for a moving violation, one point will be deducted from the individual's total points for the prior 36-month period.

§15.162. Surcharge Payments [~~Installment Agreements~~].

(a) The department, through the vendor, will accept [~~installment~~] payments for surcharges required under the Driver Responsibility Program.

(b) There is an additional processing fee required for [~~per~~] each payment submitted, including payments received electronically. [~~in accordance with an installment agreement.~~] The fee is set by the department [~~and is provided on all original notifications~~].

(c) The total annual surcharges can be paid in full or by entering into an installment agreement.

(d) [~~(c)~~] To enter into an installment agreement, the individual must submit the minimum amount due. The vendor's acceptance of the minimum amount due constitutes an installment agreement. The individual is not required to provide written declaration of the installment agreement.

(e) [~~(d)~~] To prevent or lift a suspension, the full amount or minimum installment amount [~~due~~] must be received [~~within 30 days of the original Surcharge Notification~~].

[~~(e) The driver license and or privileges of an individual who submits less than the minimum payment needed to establish an installment agreement will be suspended.~~]

[~~(f) If a suspension action has occurred, an individual who has not submitted a minimum payment can enter into an installment agreement to lift the suspension.~~]

(f) [~~(g)~~] Installment [~~Subsequent~~] payments are due each month on the same date as the date of the Surcharge Notification. The [~~for that particular surcharge. Upon entering or reinstating an installment agreement, the~~] department may permit an individual to make a one-time change to the day of the month in which an installment payment is due.

[~~(1) If the installment payment is due on the 29th, 30th or 31st, payments are due on next business day in months that do not have those dates.~~]

[~~(2) Payment due dates return to the same date as the Notification for following months that have the corresponding date.~~]

(g) [~~(h)~~] If an individual fails to provide a timely payment and defaults on the installment agreement, [~~the license and/or~~] driving privileges will be suspended. [~~The department may permit the individual to make a one-time election to reinstate the defaulted installment agreement.~~] The suspension will remain in effect until the surcharge and related fees [~~costs~~] are paid in full or the installment agreement is reinstated.

[~~(i) If suspended due to default on the installment agreement twice, an individual may continue to make partial payments; however, the license will remain suspended until the specific surcharge has been paid in full.~~]

(h) [~~(j)~~] Installment payments [~~To submit an installment payment, the individual~~] must include the full name, Texas driver license/identification card or unlicensed number and the surcharge reference number [~~with all payments~~].

(1) If an individual has multiple surcharge notifications and does not provide the reference number, the payment will be applied to the oldest outstanding surcharge requirement.

(2) If the individual submits a payment and provides a reference number, the payment will be applied as requested even if this results in a default or suspension on another surcharge owed by the same individual.

(i) [~~(k)~~] Minimum payments are determined by dividing the total amount due by the maximum payments allowed and adding the partial payment fee. [~~The maximum number of payments is determined by the amount of the surcharge required.~~]

(1) For surcharge requirements of $249 or less [~~$100 - $259~~] an individual may make a maximum of twelve (12) [~~four (4)~~] payments.

(2) For surcharge requirements of $250 through $499 [~~$260 - $499~~] an individual may make a maximum of twenty-four (24) [~~eight (8)~~] payments.

[~~(3) For surcharge requirements of $500 - $999 an individual may make a maximum of ten (10) payments.~~]

[~~(4) For surcharge requirements of $1000 - $1499 an individual may make a maximum of twelve (12) payments.~~]

[(5) For surcharge requirements of $1500 - $1999 an individual may make a maximum of twenty-four (24) payments.]

(3) [(6)] For surcharge requirements of $500 [$2000] and greater, an individual may make a maximum of thirty-six (36) payments.

(j) [(1)] An individual may pay the balance in fewer payments, but a payment of less than the minimum required will result in the suspension of [the license and/or] driving privileges.

§15.163. Military Deployment Deferral Program.

The department is authorized to provide a Military Deployment Deferral program under the Driver Responsibility Program, Texas Transportation Code, §708.106 for all United States Armed Forces members on active duty deployment outside the continental United States. This program applies to Driving While License Invalid, No Insurance and No Driver License surcharges only.

(1) To be eligible for the Military Deployment Deferral program, the individual will be required to download and complete an application on www.txsurchargeonline.com or request an application by telephone at 1-800-688-6882. Each applicant eligible for the Military Deployment Deferral program will be required to send a notarized application and a copy of their deployment orders.

(2) Each of the applicant's surcharge accounts that are eligible for the Military Deployment Deferral program will be deferred while the applicant is deployed, but no longer than 36 months.

(3) Once the department determines the applicant is eligible for the Military Deployment Deferral program, the department will rescind the suspension of driving privileges for the approved applicant, provided the applicant has no other restrictions on the driving record.

(4) A notice will be sent to each applicant approved for the Military Deployment Deferral program. The notice will provide the last date of the deferral period.

(5) Once the Military Deployment Deferral program has ended, the applicant will have thirty (30) days to pay the balance due in full or enter into an installment agreement to prevent suspension of driving privileges.

§15.164. Amnesty Program.

The department is authorized to provide for a periodic amnesty program under the Driver Responsibility Program, Texas Transportation Code, §708.157(a). Periodic amnesty reductions will be offered at the department's discretion, and the public will be notified of each amnesty period.

(1) Amnesty will apply to individuals who have been in default for a specified amount of time prior to the announcement of amnesty. The department will determine the amount of time in default for each amnesty period.

(2) To be eligible for the amnesty reduction, each individual will be required to complete an application online at www.txsurchargeonline.com or by telephone at 1-800-688-6882. Each applicant eligible for amnesty will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250.

(3) The total amount is based on all offenses on the driver record at the beginning of each amnesty period. Annual surcharges that have not been assessed for the offenses will be waived. If a new offense is reported and a new surcharge assessed after the beginning of the amnesty period, the reduction will not apply to the new surcharge.

(4) Once the department determines the applicant is eligible for amnesty, the department will rescind the suspension of driving privileges for each applicant that receives amnesty.

(5) Payment of the reduced amount must be received by the end of the amnesty period.

(6) A notice will be sent to each applicant receiving amnesty and will provide the last date to pay and the balance due.

(7) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the driver will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the driver will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(8) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

(9) If the reduced payment is received after the end of each amnesty period, the payment will be applied to the oldest outstanding surcharge account(s), and the individual must comply with the original surcharge assessment(s).

(10) An individual will be eligible to receive amnesty only once every three years.

§15.165. Incentive Program.

The department is required to provide for an incentive program under the Driver Responsibility Program, Texas Transportation Code, §708.157(b).

(1) The incentive program is a one-time reduced payment of all surcharges to 50% of the assessed amount.

(2) For purposes of the incentive program, eligibility is defined as an individual living above 125% of the poverty level but less than 300% of the poverty level. An individual must meet this definition to be eligible for a reduction. The determination of eligibility will be made by the department or its designee.

(3) To request a reduction of the surcharge under this section, each individual must submit the department approved application. The application must be completed in full and notarized prior to submission. Each applicant eligible for incentive will be required to pay 50% of the total amount of surcharges assessed. The application is available online at www.txsurchargeonline.com or may be picked up in person at any driver license office.

(4) The department may contract with a third-party for the verification of the information submitted on the application.

(5) A notice will be sent to each applicant determined eligible for the incentive reduction. The notice will provide the last date to pay and the balance due.

(6) If the applicant is not eligible for a reduction under this section, a letter of denial will be sent to the individual.

(7) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the applicant will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the applicant will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(8) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

§15.166. Indigency Program.

The department is required to provide for an indigency program under the Driver Responsibility Program, Texas Transportation Code, §708.157(c).

(1) For purposes of the Driver Responsibility Program, indigency is defined as living at or below 125% of the poverty level as defined annually by the United States Department of Health and Human Services. An individual must meet the definition of indigency to be eligible for a reduction. The determination of indigency will be made by the department or its designee.

(2) To request a reduction of the surcharge under this section, each individual must submit the department approved application. The application must be completed in full and notarized prior to submission. Each applicant eligible for indigency will be required to pay 10% of the total amount of surcharges assessed, not to exceed $250. The application is available online at www.txsurchargeonline.com or may be picked up in person at any driver license office.

(3) The department may contract with a third-party for the verification of the information submitted on the application.

(4) A notice will be sent to each applicant determined eligible for the indigency reduction. The notice will provide the last date to pay and the balance due, and payment of the reduced amount must be received within 180 days from the date of the notice. The indigency period starts on the date of the notice and ends 180 days later.

(5) The total amount is based on all offenses on the driver record at the beginning of the indigency period. Annual surcharges that have not been assessed for the offenses will be waived.

(6) During the 180-day payment period, the department will rescind the suspension of driving privileges. If payment of the reduced amount is not received within 180 days, the suspension of driving privileges will be reinstated. The reduced amount will apply until it is paid in full.

(7) If a new offense that results in a surcharge is reported 90 days or more from the notice date, the individual must submit a new application to determine continued eligibility for an indigency reduction. Surcharges due for the new offense reported within 90 days will be included in the total amount of surcharges reduced under paragraph (5) of this section. A notice will be sent to the applicant and will provide the last date to pay and the new balance due. Payment for the new balance must be received within the 180-day payment period set out in the original notice.

(8) If the applicant is not eligible for a reduction under this section, a letter of denial will be sent to the individual.

(9) If the applicant has made payment(s) prior to approval for the reduced payment, the prior payment(s) will be applied to the reduced payment.

(A) If the prior payment(s) is less than the reduced payment, the applicant will be required to pay only the difference.

(B) If prior payment(s) exceeds the reduced payment, the applicant will not be required to make a payment. Any prior payments that exceed the reduced payment will not be processed for a refund.

(10) The compensation authorized by Texas Transportation Code, §708.155(c) applies to the reduced payment.

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

Filed with the Office of the Secretary of State on April 24, 2012.

TRD-201202115
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 424-5848

37 TAC §15.163

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

The Texas Department of Public Safety (the department) proposes the repeal of §15.163, concerning Amnesty, Incentive and Indigency Programs. The repeal of this section is filed simultaneously with proposed amendments to §15.161 and §15.162 and new §§15.163 - 15.166 and is necessary to reorganize existing language and improve the clarity of Subchapter J.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal implications for state government, local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of the repeal will be increased public safety on the roadway by ensuring the license holder remains in compliance with the Driver Responsibility Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Com-

ments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Transportation Code, Chapter 708, §§708.056, 708.105, 708.106, 708.151, 708.153, 708.154, 708.157 and 708.159.

Texas Government Code, §411.004(3) and Transportation Code, Chapter 708, §§708.056, 708.105, 708.106, 708.151, 708.153, 708.154, 708.157 and 708.159, are affected by this proposal.

§15.163. Amnesty, Incentive and Indigency Programs.

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

Filed with the Office of the Secretary of State on April 24, 2012.

TRD-201202114
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 424-5848

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CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §25.7

The Texas Department of Public Safety (the department) proposes amendments to §25.7, concerning Self-Insurance. The proposed amendments change the liability amount for self-insurance to conform to the minimum liability amounts reflected in Transportation Code, §601.072. The liability limits for motor vehicle insurance coverage increased to $30,000 for bodily injury to or death of one person in one crash, $60,000 for bodily injury to or death of two or more persons in one crash and $25,000 for damage to or destruction of property of others in one crash effective January 1, 2011.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state government, local government, or local economies. The department does not anticipate a revenue gain or loss with this rule as the increase of the minimum liability limits was implemented effective January 1, 2011, and has not resulted in any fiscal impact.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amended rule will be that entities that self-insure will be aware of the current minimum financial requirements to participate in the self-insurance program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Transportation Code, §601.072

Texas Government Code, §411.004(3) and Transportation Code, §601.072 are affected by this proposal.

§25.7. Self-Insurance.

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

(c) The department will base its determination of the applicant's ability to pay claims on the following:

(1) a review of the financial statements submitted to determine if cash, marketable securities, and accounts receivable equal the normal monthly operating expenses plus a sum of $255,000 [~~$225,000~~]. The $255,000 [~~$225,000~~] represents that amount needed to satisfy three $85,000 [~~$75,000~~] claims arising from traffic crashes,

(2) information supplied on the application regarding past claim history, and

(3) other information provided by the applicant demonstrating the ability to satisfy claims.

(d) The certificate issued by the department;

(1) will be issued to the individual entity named on the vehicle registration only.

(A) if two entities are named, both entities can be named on the certificate.

(B) all named parties must have submitted the required financial statements.

(2) will contain information regarding the claim process, and

(3) will be an agreement, signed by an authorized agent of the entity seeking self insurance, stating the self-insurer will pay the same judgments in the same amount as an insurer would be obligated to pay under an owner's motor vehicle liability insurance policy up to $85,000 [~~$75,000~~] per crash.

(e) (No change.)

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

Filed with the Office of the Secretary of State on April 24, 2012.

TRD-201202116
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER I. DESIGN-BUILD CONTRACTS

43 TAC §9.152, §9.153

The Texas Department of Transportation (department) proposes amendments to §9.152 and §9.153, concerning Design-Build Contracts.

EXPLANATION OF PROPOSED AMENDMENTS

The department's own experience, and that of other agencies, establishes that evaluating contractor performance periodically during the term of a contract and discussing the results with contractors is a powerful motivator for contractors to maintain high quality performance or improve inadequate performance, and is one of the most important tools available for ensuring good contractor performance.

Past performance information is an important tool for use in future evaluations of qualifications and proposals, and in the award of design-build contracts. The use of past performance as an evaluation factor in the contract award process is instrumental in making "best value" selections. It enables the department to better predict the quality of future work.

These amendments provide for the department's periodic evaluation of a contractor's performance under a design-build contract, and of the contractor's team members, consultants, and subcontractors. The amendments also provide for the consideration of the results of those evaluations and other evaluations of past performance in the evaluation of qualifications statements submitted in response to a request for qualifications, and proposals submitted in response to a request for proposals. Past performance under other contracts is an important indicator of a proposer's ability to perform the prospective agreement successfully.

Amendments to §9.152 provide that the department will evaluate the performance of a private entity that enters into a design-build contract, and will evaluate the performance of the private entity's team members, consultants, and subcontractors. Evaluations will be conducted annually at twelve month intervals during the term of the design-build contract, upon termination of the design-build contract, and when the department determines that work is behind schedule or not being performed according to the requirements of the design-build contract. Optional evaluations may be conducted as provided in the design-build contract.

After a performance evaluation is conducted, the department will provide for review and comment a copy of the performance evaluation report to the entity being evaluated and, if that entity is a consultant or subcontractor, to the entity that entered into the design-build contract. The department will consider any submitted comments in finalizing the performance evaluation report.

Amendments to §9.153 provide that the department will consider the results of performance evaluations conducted by the department under §9.152 and 43 TAC §27.3 (concerning Comprehensive Development Agreements), the results of other performance evaluations determined by the department to be relevant to the project, and other criteria that the department considers appropriate in the evaluation of qualifications statements submitted in response to a request for qualifications, and in the evaluation of proposals for a design-build contract.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. The fiscal implications cannot be quantified with certainty as it will depend on the number of design-build contracts entered into by the department and the number of performance evaluations conducted by the department. There will be no fiscal implications for local governments as a result of enforcing or administering the amendments.

Ed Pensock, Director, Strategic Projects Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Pensock has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to improve the process for awarding design-build contracts and to improve the performance of contractors and team members, consultants, and subcontractors of contractors. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.152 and §9.153 may be submitted to Ed Pensock, Director, Strategic Projects Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2012. In accordance with Transportation Code, §201.810(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter F.

§9.152. General Rules for Design-Build Contracts.

(a) Applicability. The rules in this subchapter address the manner by which the department intends to evaluate submissions received from private entities in response to requests for qualifications and requests for proposals issued by the department.

(b) Reservation of rights. The department reserves all rights available to it by law in administering this subchapter, including without limitation the right in its sole discretion to:

(1) withdraw a request for qualifications or a request for proposals at any time, and issue a new request;

(2) reject any and all qualifications submittals or proposals at any time;

(3) terminate evaluation of any and all qualifications submittals or proposals at any time;

(4) suspend, discontinue, or terminate negotiations with any proposer at any time prior to the actual authorized execution of a design-build contract by all parties;

(5) negotiate with a proposer without being bound by any provision in its proposal;

(6) negotiate with a proposer to include aspects of unsuccessful proposals for that project in the design-build contract;

(7) request or obtain additional information about any proposal from any source;

(8) modify, issue addenda to, or cancel any request for qualifications or request for proposals;

(9) waive deficiencies in a qualifications submittal or proposal, accept and review a non-conforming qualifications submittal or proposal, or permit clarifications or supplements to a qualifications submittal or proposal; or

(10) revise, supplement, or make substitutions for all or any part of this subchapter.

(c) Costs incurred by proposers. Except as provided in §9.153(f) of this subchapter (relating to Solicitation of Proposals), under no circumstances will the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise obligated to reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements.

(d) Department information. Any and all information the department makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind except as may be expressly specified in the request for qualifications or request for proposals. Proposers may not rely upon any oral responses to inquiries.

(e) Procedure for communications. If a proposer has a question or request for clarification regarding this subchapter or any request for qualifications or request for proposals issued by the department, the proposer shall submit the question or request for clarification in writing to the person responsible for receiving those submissions, as designated in the request for qualifications or request for proposals, and the department will provide the responses in writing. The proposer shall also comply with any other provisions in the request for qualifications or request for proposals regulating communications.

(f) Compliance with rules. In submitting any proposal, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of this subchapter.

(g) Proposer information submitted to department. All qualifications submittals or proposals submitted to the department become the property of the department and may be subject to the Public Information Act, Government Code, Chapter 552. Proposers should familiarize themselves with the provisions of the Public Information Act. In no event shall the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subchapter. Except as otherwise expressly specified in the request for qualifications or request for proposals, if the department receives a request for public disclosure of all or any portion of a qualifications submittal or proposal, the department will notify the applicable proposer of the request and inform that proposer that it has an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified in the department's notice and allowed under the Public Information Act. If a proposer has special concerns about information it desires to make available to the department, but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, the proposer should specifically and conspicuously designate that information as such in its qualifications submittal or proposal. The proposer's designation shall not be dispositive of the trade secret, proprietary, or exempted nature of the information so designated.

(h) Sufficiency of proposal. All proposals, whether solicited or unsolicited, should be as thorough and detailed as possible so that the department may properly evaluate the potential feasibility of the proposed project as well as the capabilities of the proposer and its team members to provide the proposed services and complete the proposed project.

(i) Project studies. Studies that the department deems necessary as to route designation, civil engineering, environmental compliance, and any other matters will be assigned, conducted, and paid for as negotiated between the department and the successful proposer and set forth in the design-build contract.

(j) Proposer's additional responsibilities. The department, in its sole discretion, may authorize the successful proposer to seek licensing, permitting, approvals, and participation required from other governmental entities and private parties, subject to such oversight and review by the department as specified in the design-build contract.

(k) Proposer's work on environmental review of eligible project. The department may solicit proposals in which the proposer is responsible for providing assistance in the environmental review and clearance of an eligible project, including the provision of technical assistance and technical studies to the department or its environmental consultant relating to the environmental review and clearance of the proposed project. The environmental review and the documentation of that review shall at all times be conducted as directed by the department and subject to the oversight of the department, and shall comply with all requirements of state and federal law, applicable federal regulations, and the National Environmental Policy Act (42 U.S.C. §4321 et seq.), if applicable, including but not limited to the study of alternatives to the proposed project and any proposed alignments, procedural requirements, and the completion of any and all environmental documents required to be completed by the department and any federal agency acting as a lead agency. The department:

(1) shall determine the scope of work to be performed by the private entity or its consultants or subcontractors;

(2) shall specify the level of design and other information to be provided by the private entity or its consultants or subcontractors; and

(3) shall independently review any studies and conclusions reached by the private entity or its consultants or subcontractors before their inclusion in an environmental document.

(l) Effect of environmental requirements on design-build contract. Completion of the environmental review, including obtaining approvals required under the National Environmental Policy Act, is required before the private entity may be authorized to conduct and complete the final design and start construction of a project. Additionally, all applicable state and federal environmental permits and approvals must be obtained before the private entity may start construction of the portion of a project requiring the permit or approval. Unless and until that occurs, the department is not bound to any further development of the project. The department, and any federal agency acting as a lead agency, may select an alternative other than the one in the proposed project, including the "no-build" alternative. A design-build contract shall provide that the agreement will be modified as necessary to address requirements in the final environmental documents, and shall provide that the agreement may be terminated if the "no-build" alternative is selected or if another alternative is selected that is incompatible with the requirements of the agreement.

(m) Public meetings and hearings. All public meetings or hearings required to be held under applicable law or regulation will be directed and overseen by the department, with participation by such other parties as it deems appropriate.

(n) Additional matters. Any matter not specifically addressed in this subchapter that pertains to the construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project pursuant to this subchapter, shall be deemed to be within the primary purview of the commission, and all decisions pertaining thereto, whether or not addressed in this subchapter, shall be as determined by the commission, subject to the provisions of applicable law.

(o) Performance and payment security. The department shall require a private entity entering into a design-build contract to provide a performance and payment bond or an alternative form of security, or a combination of bonds and other forms of security, in an amount equal to the cost of constructing the project, unless the department determines that it is impracticable for a private entity to provide security in that amount, in which case the department will set the amount of security. The security will be in the amount that, in the department's sole determination, is sufficient to ensure the proper performance of the agreement, and to protect the department and payment bond beneficiaries supplying labor or materials to the private entity or a subcontractor of the private entity. Bonds and alternate forms of security shall be in the form and contain the provisions required in the request for proposals or the design-build contract, with such changes or modifications as the department determines to be in the best interest of the state. In addition to, or in lieu of, performance and payment bonds, the department may require:

(1) a cashier's check drawn on a federally insured financial institution, and drawn to the order of the department;

(2) United States bonds or notes, accompanied by a duly executed power of attorney and agreement authorizing the collection or sale of the bonds or notes in the event of the default of the private entity or a subcontractor of the private entity, or such other act or event that, under the terms of the design-build contract, would allow the department to draw upon or access that security;

(3) an irrevocable letter of credit issued or confirmed by a financial institution to the benefit of the department, meeting the credit rating and other requirements prescribed by the department, and providing coverage for a period of at least one year following final acceptance of the project or, if there is a warranty period, at least one year following completion of the warranty period;

(4) an irrevocable letter signed by a guarantor meeting the net worth or other financial requirements prescribed in the request for proposals or design-build contract, and which guarantees, to the extent required under the request for proposals or design-build contract, the full and prompt payment and performance when due of the private entity's obligations under the design-build contract; or

(5) any other form of security deemed suitable by the department.

(p) Performance evaluations. The department will evaluate the performance of a private entity that enters into a design-build contract, and will evaluate the performance of the private entity's team members, consultants, and subcontractors. Evaluations will be conducted annually at twelve month intervals during the term of the design-build contract, upon termination of the design-build contract, and when the department determines that work is behind schedule or not being performed according to the requirements of the design-build contract. Optional evaluations may be conducted as provided in the design-build contract. After a performance evaluation is conducted, the department will provide for review and comment a copy of the performance evaluation report to the entity being evaluated and, if that entity is a consultant or subcontractor, to the entity that entered into the design-build contract. The department will consider any submitted comments in finalizing the performance evaluation report. The results of performance evaluations may be used in the evaluation of qualifications submittals and proposals submitted under §9.153 of this subchapter and §27.4 of this title (relating to Solicited Proposals) by proposers that include the team members, consultants, and subcontractors evaluated.

§9.153. Solicitation of Proposals.

(a) Request for qualifications - notice. If authorized by the commission to issue a request for qualifications for a highway project, the department will set forth the basic criteria for qualifications, experience, technical competence and ability to develop the project, and such other information as the department considers relevant or necessary in the request for qualifications. The department will publish notice advertising the issuance of the request for qualifications in the *Texas Register* and will post the notice and the request for qualifications on the department's Internet website. The department may also elect to furnish the request for qualifications to businesses in the private sector that the department otherwise believes might be interested and qualified to participate in the project that is the subject of the request for qualifications.

(b) Request for qualifications - content. At its sole option, the department may elect to furnish conceptual designs, fundamental details, technical studies and reports or detailed plans of the proposed project in the request for qualifications, and may request conceptual approaches to bringing the project to fruition. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project;

(3) criteria that will be used to evaluate the qualifications submittals;

(4) the relative weight to be given to the criteria;

(5) the deadline by which qualifications submittals must be received by the department; and

(6) any other information the department considers relevant or necessary.

(c) Request for qualifications - evaluation. The department, after evaluating the qualification submittals received in response to a request for qualifications, will identify and approve a "short-list" that is composed of those entities that are considered most qualified to submit detailed proposals for a proposed project. In evaluating the qualification submittals, the department will consider the results of performance evaluations conducted by the department under §9.152 of this subchapter (relating to General Rules for Design-Build Contracts) and §27.3 of this title (relating to General Rules for Private Involvement), the results of other performance evaluations determined by the department to be relevant to the project, and other criteria [~~such qualities~~] that the department considers relevant to the project, including a proposer's qualifications, experience, technical competence, and ability to develop the project, and that may include the private entity's financial condition, management stability, staffing, and organizational structure. The department may interview entities responding to a request for qualifications. The department shall short-list at least two private entities to submit proposals, but may not short-list more private entities than the number of private entities designated in the request for qualifications if a maximum number is designated. The department shall advise each entity providing a qualifications submittal whether it is on the short-list of qualified entities.

(d) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all private entities qualified for the short-list, consisting of the submission of detailed documentation regarding the project. A request for proposals must include:

(1) information on the overall project goals;

(2) publicly available cost estimates for the design-build portion of the project;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the department relating to awarding contracts to disadvantaged business enterprises or small business enterprises;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal, including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals and the formula by which the proposals will be evaluated and ranked, which must allocate at least 70 percent of weighting to the cost proposal;

(14) the criteria to be used in evaluating the technical proposals, and the relative weighting of those criteria;

(15) the proposed form of design-build contract; and

(16) any other information the department considers relevant or necessary.

(e) Request for proposals - submittal requirements. The request for proposals must require the submission of a sealed technical proposal and a separate sealed cost proposal no later than the 180th day after the issuance of the request for proposals, and that provide information relating to:

(1) the feasibility of developing the project as proposed;

(2) the proposed solutions to anticipated problems;

(3) the ability of the proposer to meet schedules;

(4) the engineering design proposed;

(5) the cost of delivering the project;

(6) the estimated number of days required to complete the project; and

(7) any other information requested by the department.

(f) Requests for proposals - payment for work product. The request for proposals shall stipulate an amount of money, as authorized under Transportation Code, §223.249, that the department will pay to an unsuccessful proposer that submits a proposal that is responsive to the requirements of the request for proposals. The commission shall approve the amount of the payment to be stipulated in the request for proposals, which must be a minimum of twenty-five hundredths of one percent of the contract amount. The request for proposals shall provide for the payment of a partial amount in the event the procurement is terminated. In determining the amount of the payment, the commission shall consider:

(1) the effect of a payment on the department's ability to attract meaningful proposals and to generate competition;

(2) the work product expected to be included in the proposal and the anticipated value of that work product; and

(3) the costs anticipated to be incurred by a private entity in preparing a proposal.

(g) Request for proposals - evaluation. The proposals will be evaluated by the department based on the results of performance evaluations conducted by the department under §9.152 of this subchapter and §27.3 of this title, the results of other performance evaluations determined by the department to be relevant to the project, and other [~~those~~] evaluation criteria the department deems appropriate for the project, including those criteria deemed appropriate by the department to maximize the overall performance of the project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals. The department shall first open, evaluate, and score each responsive technical proposal, and shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals.

(h) Apparent best value proposal. Based on the evaluation using the evaluation criteria described under subsection (g) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this subchapter, in accordance with the formula provided in the request for proposals. The department may select the private entity whose proposal offers the apparent best value to the department.

(i) Selection of entity. The department shall submit a recommendation to the commission regarding approval of the proposal de-

termined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the design-build contract to the apparent best value proposer. Award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the design-build contract, and satisfaction of such other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(j) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate a design-build contract with the apparent best value proposer. If a design-build contract satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the overall best value, the department will formally and in writing end negotiations with that proposer and, in its sole discretion, either:

(1) reject all proposals;

(2) modify the request for proposals and begin again the submission of proposals; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate a design-build contract with that entity in accordance with this paragraph.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202151
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§16.2, 16.4, 16.51 - 16.55, 16.101 - 16.105, new §16.106, and amendments to §§16.151 - 16.154, 16.156, 16.160, and 16.201 - 16.204, all concerning planning and development of transportation projects.

EXPLANATION OF PROPOSED AMENDMENTS

Title 43 TAC Chapter 16, Subchapter A, General Provisions, Subchapter B, Transportation Planning, Subchapter C, Transportation Programs, Subchapter D, Transportation Funding, and Subchapter E, Project and Performance Reporting, were adopted in 2010 to establish a comprehensive, transparent, well-defined, and understandable process for the department's project planning and programming functions that integrate priorities, financial forecasts, and project milestones. Senate Bill 1420, 82nd Legislature, Regular Session, 2011, amended Transportation Code, §201.601, and added new §§201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998 to provide a statutory framework for the department's transportation planning, programming, funding, and reporting obligations. The proposed amendments are necessary to comply with Senate Bill 1420 and clarify existing language.

SUBCHAPTER A. GENERAL PROVISIONS

Amendments to §16.2(a) add new definitions including "chief financial officer" in paragraph (1), "chief planning and project officer" in paragraph (2), "Federal Railroad Administration" in paragraph (14), and "transportation reinvestment zone" in paragraph (36). There are no current definitions for these terms and it is important to clearly identify them as participants and factors in the planning, programming, and funding sections.

Amendments to §16.2(a) also modify certain definitions. "Public transportation" adds the Federal Railroad Administration to the types of agencies and political subdivisions that provide financial assistance to public transportation entities. "Texas Highway Trunk System" adds the word "centerline" to clarify that the maximum miles in the system refer to centerline miles rather than lane miles. "Unified planning work program" deletes the word "bi-annual" and replaces it with the word "biennial" to correct a mistaken reference.

Amendments to §16.2(b) add new acronyms including "FRA" in paragraph (4) for the Federal Railroad Administration, "RTP" in paragraph (10) for a rural transportation plan, and "TRZ" in paragraph (19) for a transportation reinvestment zone. The acronyms are added for reference purposes.

Section 16.4, Introduction, is a description, explanation and overview of the actual planning and programming process that is described in detail in Subchapter B, Transportation Planning, and Subchapter C, Transportation Programs. Since there are many proposed amendments to those two subchapters that affect the planning and programming process, it is necessary to make corresponding changes to §16.4. Amendments to §16.4 do not create new rights and obligations, but merely reflect the changes in Chapter 16, Subchapters B and C that are described in detail later in this Preamble as each applicable subchapter is addressed.

Changes in §16.4(b)(1) add a rural transportation plan to the long-range planning documents. This corresponds to changes made in §16.55 to formalize the process for developing long-range strategies in rural areas of the state.

Changes in §16.4(c)(1) set the period of time for the statewide long-range transportation plan (SLRTP) at 24 years. This corresponds to changes made in §16.54(a) to comply with Transportation Code, §201.601 in Senate Bill 1420. Changes in §16.4(c)(1) also add the statewide transportation program (STIP) and unified transportation program (UTP) to the SLRTP. This corresponds to changes made in §16.54(b) to ensure that the long-range plan is comprehensive and the projects flow seamlessly through the planning, programming, and implementation phases.

Amendments to §16.4(c)(3) describe the new concept of a rural transportation plan as a long-range plan developed by the department for areas not included in the boundaries of a metropolitan planning organization, that covers a period of at least 20 years. This corresponds to changes made in §16.55 to formalize the process for developing long-range strategies in rural areas of the state.

Amendments to §16.4(d) clarify that the first four years of the ten-year UTP include projects in the STIP and the following six years contain the remaining projects.

Amendments to §16.4(e) clarify that projects in the transportation improvement program (TIP) and in the STIP can include maintenance as well as construction projects; and financial constraints for projects listed in the STIP relate to funds that are reasonably expected to be available. A reference to funding available for the first two years of the STIP in nonattainment and maintenance areas is deleted from §16.4(e) because there was no similar language in the body of the actual text for the STIP in §16.103. It described a federal requirement imposed by 23 C.F.R. Part 450 and federal law will continue to control on this issue.

Amendments to §16.4(f) delete the existing graphic flow chart and replace it with a new graphic that better illustrates the planning and programming process.

SUBCHAPTER B. TRANSPORTATION PLANNING

Amendments to §16.51(d) delete the word "contract" and replace it with the word "agreement" to be consistent with other references to "planning agreements" in §16.51(d).

Amendments to §16.52(a)(1) delete the word "bi-annually" and replace it with the word "biennially" to correct the required timeframe for developing the unified planning work program. A metropolitan planning organization (MPO) must develop a unified planning work program annually or every two years.

Amendments to §16.52(a)(5) revise the due date for submission to the department of the MPOs' annual performance and expenditure report from "December 31" to "December 15." This change allows the department more time to review and forward a report to FHWA while still providing an extended period of time for an MPO to submit the report.

Amendments to §16.52(b)(5) delete the language that describes how environmental studies are treated for purposes of using federal transportation planning funds. The language draws a distinction between environmental studies for corridor level planning which are permitted uses and specific project level planning and engineering which are not. This reference is deleted because notwithstanding the department's rule provisions, federal transportation planning funds are subject to the terms and conditions of federal law under 23 C.F.R. Part 450 and federal law will control on this issue.

Amendments to §16.53 clarify that an MPO must develop, update, and revise its 20-year metropolitan transportation plan (MTP) on a time cycle that coincides and is compatible with the statewide long-range transportation plan. It is critical to the overall process that MPOs and the department coordinate their planning efforts and that the plans of each are consistent. If the various MTPs are not developed on substantially the same schedule, it is impossible for the department to prepare statewide plans and updates that contain reasonably accurate information. The joint obligation of the department and MPOs to coordinate the planning process is consistent with Transportation Code, §201.620 and §472.035, and federal regulations in 23 C.F.R. Part 450.

Amendments to §16.54(a) revise the period of time covered by the statewide long-range transportation plan (SLRTP) from a variable period described as "not less than 24 years" to a fixed period of "24 years." This change is mandated by Transportation Code, §201.601 in Senate Bill 1420. Another change deletes the word "turnpikes" and replaces it with the words "toll roads" to be consistent with other references to toll roads throughout Chapter 16.

Amendments to §16.54(b)(1) and (2) add the STIP and UTP as components of the SLRTP to ensure that the long-range plan is comprehensive and the projects flow seamlessly through the planning, programming, and implementation phases. The amendments to §16.54(b)(3) simplify and broaden the department's specific listed long-term transportation goals to three: efforts to maintain a safe transportation system, address travel congestion, and connect Texas communities. These three goals highlight the department's core functions, but they are not exclusive. The Texas Transportation Commission (commission) may periodically adopt additional long-term transportation goals.

Amendments to §16.54(d) add a requirement that in developing each of the department's transportation plans and policy efforts, the department clearly reference the SLRTP and specify how the plan or policy efforts supports or relates to the long-term transportation goals. This change is mandated by Transportation Code, §201.6015 in Senate Bill 1420.

Amendments to §16.54(e) clarify that an amendment, update, or revision of the STIP or UTP is an administrative modification of the SLRTP and does not require a formal update. Section 16.54(b)(1) and (2) add the STIP and UTP as components of the SLRTP. Since the STIP and UTP are required to be revised and updated more frequently than the SLRTP, this addition is necessary to prevent unnecessary updates to the SLRTP.

Amendments to §16.54(f) clarify several issues involving the process of public involvement for development of the SLRTP. Paragraph (1) clarifies that the department will seek to effectively engage the general public and stakeholders in development of the SLRTP. Although the existing wording is consistent with federal regulations in 23 C.F.R. Part 450, the replacement wording more accurately reflects the department's intention to proactively seek public involvement. Amendments to paragraph (2) shift the focus from a regional perspective to a more local district perspective. Amendments to paragraph (3) clarify that a representative from a district is only under an obligation to attend a public meeting for an update of the SLRTP if the substance of the update affects that particular district. New paragraph (4) clarifies that the department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants. All of the changes to §16.54(f) are designed to provide flexibility to meet the physical long distance challenges across the state while still maintaining effective public involvement.

Amendments to §16.54(h) add SLRTP updates and administrative modifications to the documents that the department will publish on its website and make available for review at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin.

Amendments to §16.55(a) add specific requirements for the department to develop a 20-year rural transportation plan (RTP) to include long-range strategies that lead to the development of an integrated intermodal transportation system. The RTP will be cooperatively developed by the department, rural planning organizations, and municipalities, counties, public transportation operators, and other local transportation entities operating outside the boundaries of an MPO. The RTP will be based on the funding assumptions and forecasts applicable to all other statewide planning and programming, and must be compatible with the SLRTP. Although a general obligation currently exists in §16.55 to develop long-range strategies for the rural areas of the state, the amendments include new specific requirements to formalize that process.

Amendments to §16.55(b) add a requirement that the prioritized list of projects in the RTP include major transportation projects as described in new §16.106. This change is mandated by Transportation Code, §201.994 in Senate Bill 1420. Amendments to §16.55(b) also delete the phrase "district engineer of the district in which the area is located" as the position within the department responsible for long-range planning recommendations in areas outside of the boundaries of an MPO and RPO, and replace it with the "department." This change provides more flexibility for the department to allocate responsibilities within its administrative structure.

SUBCHAPTER C. TRANSPORTATION PROGRAMS

Amendments to §16.101 assimilate the requirements for development of a transportation improvement program (TIP) for a metropolitan planning area with those imposed by state law on development of the unified transportation program (UTP), and clarify the wording in several provisions. Changes in §16.101(a) and (i) reference corresponding subsections relating to the UTP in §16.105(b) and (d) respectively, to coordinate the prioritized listing of projects within each funding category and the criteria to be used for project selection and priority ranking. These changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

Amendments to §16.101(g) delete a specific requirement that in nonattainment areas, the plan must demonstrate that funding is available or committed for the first two years of the TIP. This statement reflects a requirement currently identified in 23 C.F.R. Part 450, Subpart C. The MPOs must comply with federal law under §16.101(b) and there is no need to repeat those requirements in the department's rules. Because the timing of this obligation is unclear in the context of the department's and the MPO's individual programs, the requirement is removed from §16.101(g).

Amendments to §16.101(k)(1)(C)(ii) clarify one of the circumstances under which an amendment to the TIP is not required. The current language of this clause applies to highway projects and describes only a change in the cost estimate where such change is not greater than 50 percent of the approved cost estimate and the revised cost estimate is less than $1,500,000. There are other standards for transit projects. Rather than specifically reference every possible different standard under federal law, the amendment adds a general qualifier for those situations where federal law or regulation specify a different cost estimate percentage and condition relating to waiver of the TIP amendment requirement. The word "project" is also added to §16.101(k)(1)(C)(ii) and (iii) to clarify that the referenced cost estimate and letting date relate to a specific project.

Amendments to §16.102(a) add a reference to 23 U.S.C. §135 and 23 C.F.R. Part 450 to clarify that a rural transportation improvement program (RTIP) for an area of the state outside of metropolitan planning areas must also comply with federal law. The amendments also provide for the assimilation of the requirements for development of a RTIP with those imposed by state law on development of the unified transportation program (UTP). Amendments to §16.102(a) reference the UTP in §16.105 to coordinate the prioritized ranking of projects within each funding category and the criteria to be used for project selection and priority ranking. These changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

Amendments to §16.102(i) provide greater flexibility for the department to maximize public involvement in the development and proposed revisions to the RTIP. The specific requirement to publish notice in a local newspaper is deleted and replaced with a general requirement to publish notice as appropriate to maximize public involvement. In many rural areas of the state, a newspaper notice may still be used. In other areas, the department can select other methods that will be more effective. The phrase "public hearing" is replaced with the phrase "public meeting" to clarify that there will be an informal exchange of information and concerns between the department and the public rather than a structured hearing.

Amendments to §16.103(d)(1) delete an obligation for the department to provide additional public involvement at the local level during development of the statewide transportation improvement program (STIP). A statewide public hearing regarding the adoption of the STIP is retained. During implementation of Chapter 16 in the period following its effective date of January 1, 2011, the department determined that the local public meetings for development of the STIP were duplicative of meetings held for the adoption of the individual TIPs under §16.101 and RTIPs under §16.102. The STIP by law includes all of the TIPs and RTIPs approved in accordance with §16.101 and §16.102. The STIP meetings were redundant to the TIP and RTIP public involvement initiatives, poorly attended, and an inefficient use of department resources.

Amendments to §16.103(f)(2) add the phrase "or the department" to clarify that the department may submit a request for an exception to the quarterly STIP revision schedule as well as an MPO.

Amendments to §16.104 delete the phrase "applicable district engineer" and replace it with the word "department" to provide for flexibility when making programming recommendations concerning prioritization of projects in the department's UTP for an area that is outside of the boundaries of an MPO and an RPO.

Amendments to §16.105 significantly revise the requirements for development of the department's unified transportation program (UTP). Most of the changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, 201.994, and 201.995 in Senate Bill 1420. Other changes are made to provide more flexibility with implementation of the annual program.

Amendments to §16.105(a) add the words "and maintenance" to clarify that projects in the UTP include both construction and maintenance projects. The word "cooperate" is deleted and replaced with the word "collaborate" and the listing of "metropolitan planning organizations (MPO)" and "rural planning organizations (RPO)" is deleted and replaced with the phrase "local transportation entities." These changes are necessary to comply with the wording and concepts mandated by Transportation Code, §201.991 in Senate Bill 1420.

Amendments to §16.105(b)(1) revise and add to the requirements for development of the UTP. The phrase "and other authorized entity" is added as a type of entity entitled to receive an allocation of funding in the UTP. This change makes it consistent with references in Subchapter D, Transportation Funding.

Amendments to §16.105(b)(2) clarify that projects in the UTP include both construction and maintenance projects. The phrase "and the applicable funding category to which a project or program is assigned" is added to the requirement that there must be a listing of all projects and programs that the department intends

to develop. Amendments to §16.105(b)(2)(G) also add a list of major transportation projects that the department must incorporate into its listing of projects and programs that the department intends to develop in the UTP. These changes are necessary to comply with the wording and concepts mandated by Transportation Code, §§201.991, 201.992, 201.994, and 201.995 in Senate Bill 1420.

Amendments to §16.105(b)(4) add another item that the department must incorporate into the UTP. The department must designate the priority ranking of each listed project within a program funding category. This change is necessary to comply with the wording and concepts mandated by Transportation Code, §201.992 and §201.995 in Senate Bill 1420.

Amendments to §16.105(d)(1) revise and clarify the department's transportation goals that will be considered as criteria for project selection in the UTP. The goals of safety and congestion relief are revised and simplified. The goal to connect Texas communities is added. The goals to "maintain and preserve the existing transportation system," "increase the accessibility and mobility of the transportation system for all transportation users," "support the economic vitality of the area," and "promote efficient system management and operation" are deleted. They are replaced with a provision that incorporates the goals identified in the statewide long-range transportation plan (SLRTP). The three specifically identified goals of safety, addressing travel congestion, and connecting Texas communities and transportation systems are fundamental to the operation of the state highway system and must always be included. By then incorporating the other goals identified in the SLRTP, the department is able to react to changing circumstances over the years and sustain a modern and responsive transportation system. The potential of a project to assist the department in attainment of the measurable targets for the transportation goals is also added to the criteria for project selection in the UTP.

Amendments to §16.105(d)(2) add a requirement that the department establish criteria to rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals of the department. A project will be ranked within its applicable program funding category and classified as tier one, tier two, or tier three for ranking purposes. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. An exception to the tier one, tier two, or tier three ranking designation is provided for projects designated for development or construction in accordance with the mandates of state or federal law. This change is necessary to comply with the wording and concepts mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

Amendments to §16.105(e) clarify the process for adopting the UTP. The deadline for adoption of the UTP is changed from March 31 of each even-numbered year to August 31 of each year. This change is necessary to comply with the wording and concepts for an annual UTP mandated by Transportation Code, §201.992 in Senate Bill 1420. Since the department must develop a new UTP every year, the August 31 date provides the maximum time to develop the document and adjust to changing circumstances prior to the beginning of the next fiscal year. The word "commission" is deleted and replaced with the word "department" to clarify that the ministerial function of providing a hearing prior to the adoption of the UTP and any updates is not a commission function. Amendments to §16.105(e) also clarify the requirements for updating the UTP. The UTP may be updated more frequently than the annual adoption if it is necessary to authorize a major change to one or more funding allocations or priority project listings. The need for these changes was identified during implementation of Chapter 16 in the period following its effective date of January 1, 2011.

Amendments to §16.105(f) clarify the requirements for making administrative revisions to the UTP that are minor in nature and do not rise to the level of a formal update. An administrative revision may occur at any time and is defined as a minor or nondiscretionary change to funding allocations and project listings. The subsection then specifically identifies seven examples of an administrative revision: (A) a project may be added to the UTP or moved forward or delayed if: (i) the status of a listed project changes and if the moved or added project can be developed and let within the district's or MPO's allocated funds in the applicable program funding category during two consecutive years of the UTP; (ii) the project and funding for the project is specifically identified in a commission minute order for pass-through toll financing; or (iii) the project and funding for the project is specifically identified in a federal or state legislative act or appropriation; (B) a district or MPO may transfer all or a portion of its allocated funds either within a program funding category or between funding categories during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable funding category as listed in the UTP is not exceeded or reduced; (C) a district or MPO may transfer all or a portion of its allocated funds from a program funding category to another district or MPO during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable funding category as listed in the UTP is not exceeded or reduced; (D) a local government may provide additional funding contributions for a project; (E) a district may transfer all or a portion of its allocated funds in a program funding category to an adjoining district for a project that extends across the districts' common boundary; (F) a district or MPO may transfer any unspent excess allocated funds remaining in a program funding category at the end of a fiscal year to the same program funding category for the next fiscal year; and (G) projects that are listed for informational purposes in program funding categories identified as allocation programs may be added to or deleted from the categories. The seven examples are not an exclusive listing of administrative revisions. The need for flexibility in dealing with minor changes to the UTP was identified during implementation of Chapter 16 in the period following its effective date of January 1, 2011. There were numerous instances requiring quick action on minor changes to the UTP that could not go forward without first going through the extensive public involvement requirements applicable to a formal update. The changes in §16.105(f) allow the department to expedite the process for minor changes to the UTP and develop projects in a more business-like manner.

Amendments to §16.105(f) also clarify the process for making administrative revisions to the UTP. Paragraph (5) authorizes the department to incorporate an administrative revision into the UTP if the request complies with the requirements set out in the rule and compliance is confirmed by the chief planning and project officer. If a request otherwise qualifies as a minor or nondiscretionary change to a funding allocation or project listing in the UTP but does not comply with the seven specific listed examples, the request must also be approved by the chief financial officer. In determining whether to approve the administrative

revision request, the chief financial officer must consider the fiscal impact of the requested revision in the context of the current cash flow forecast. Paragraph (6) requires department staff to provide a written report to the commission within two months after the end of each quarter identifying all administrative revisions implemented during the preceding quarter. These additions seek to provide an oversight review of the requests to reduce the possibility of inadvertent transfers.

Amendments to §16.105(g) clarify several issues involving the process of public involvement for development of the UTP. Paragraph (1) clarifies that the department will seek to effectively engage the general public and stakeholders in development of the UTP. Although the existing wording is consistent with federal regulations in 23 C.F.R. Part 450, the replacement wording more accurately reflects the department's intention to proactively seek public involvement. The change in paragraph (2) shifts the focus from a regional perspective to a more local district perspective. The change in paragraph (3) clarifies that a representative from a district is only under an obligation to attend a public meeting for an update of the UTP if the substance of the update affects that particular district. New paragraph (4) clarifies that the department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants. All of the changes to §16.105(g) are designed to provide flexibility to meet the physical long distance challenges across the state while still maintaining effective public involvement.

Amendments to §16.105(h) delete the word "Finance" and replace it with the words "Transportation Planning and Programming" to reflect the new organizational structure and responsibilities within the department for development of the UTP.

Amendments to §16.105(i) add UTP administrative revisions to the UTP related documents that the department must publish on the department's website and have available for review at each of the district offices and the department's Transportation Planning and Programming Division offices in Austin.

New §16.106 establishes criteria for designating a project as a major transportation project, develops benchmarks for evaluating the progress of a major transportation project and timelines for implementation and construction of a major transportation project, and identities the critical benchmarks that must be met before a major transportation project may enter the implementation phase of the UTP. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 and §201.995 in Senate Bill 1420.

New §16.106(a) establishes criteria for designating a project as a major transportation project. A major transportation project is defined in subsection (a) as the planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance of a bridge, highway, toll road, or toll road system on the state highway system that fulfills or satisfies a particular need, concern, or strategy of the department in meeting the transportation goals established in the UTP. It is limited to highway facilities and does not include rail, aviation, or other modes of transportation. A project may be designated by the department as a major transportation project if it meets one or more of the following criteria: (1) the project has a total estimated cost of $500 million or more; (2) there is a high level of public or legislative interest in the project; (3) the project includes a significant level of local or private entity funding; (4) the project is unusually complex; or (5) the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need. The criteria for designating a project as a major transportation project are patterned on guidelines promulgated by the U.S. Department of Transportation Federal Highway Administration for identifying "major projects" under federal law.

New §16.106(b) requires a list of major transportation projects to be annually updated and incorporated into the UTP. This change is necessary to comply with the process mandated by Transportation Code, §201.992 and §201.994 in Senate Bill 1420.

New §16.106(c) describes the benchmarks for planning, implementation, and construction of a major transportation project. The benchmarks include environmental clearance issued by the applicable federal or state agency; acquisition or possession of right of way parcels sufficient to proceed to construction in accordance with planned construction phasing; adjustment of utility facilities or coordination of adjustment sufficient to proceed to construction in accordance with planned construction phasing; 100 percent completion of plans, specifications, and estimates; award of construction contract by the commission; and completion of construction. Progress of the projects based on the benchmarks and corresponding timelines will be tracked and evaluated in accordance with reporting requirements in Subchapter E, Project and Performance Reporting. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 in Senate Bill 1420.

New §16.106(d) defines the implementation phase as the first year of the UTP. The critical benchmarks that must be met before a major transportation project may enter the implementation phase are: the project must be listed in the statewide long-range transportation plan and the applicable metropolitan transportation plan; and the project has environmental clearance issued by the applicable federal or state agency. Use of the environmental clearance benchmark limits placement of major transportation projects in the first year of the UTP to only those projects that have a realistic chance to proceed to construction in that time frame while still allowing those projects to complete right of way acquisition, adjustment of utility facilities, and plans, specifications, and estimates during the final year. The executive director may approve an exception to the critical benchmark limitation if the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need, and there is a reasonable likelihood that environmental clearance for the project will be issued and the other required development benchmarks will be timely accomplished to permit an award of a construction contract within the one year implementation phase of the UTP. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 in Senate Bill 1420.

SUBCHAPTER D. TRANSPORTATION FUNDING

Amendments to §16.151(a) delete the phrase "in cooperation with metropolitan planning organizations (MPO)" from the department's obligation to develop mutually acceptable assumptions for the purpose of long-range federal and state funding forecasts, and replace it with the broader concept of "in collaboration with local transportation entities." This change is necessary to comply with the wording mandated by Transportation Code, §201.993 in Senate Bill 1420.

Amendments to §16.151(a) also add an obligation that the department and each planning organization will use the mutually

developed funding assumptions to "coordinate" development of all long-range, mid-range, and short-range planning and programming documents, including the metropolitan transportation plans, rural transportation plan, statewide long-range transportation plan, transportation improvement programs, rural transportation improvement programs, statewide transportation improvement program, and unified transportation program. The obligation to use the same funding assumptions is critical to the development of cohesive planning and programming documents among the various participants and is consistent with federal regulations under 23 C.F.R. Part 450, and the concepts and wording mandated by Transportation Code, §201.993 in Senate Bill 1420.

Amendments to §16.151(b)(2) delete the phrase "and the Texas Mobility Fund" in the paragraph's reference to the anticipated level of registration fees and other state non-gas tax revenues to be used as one of the factors to be included in development of the funding assumptions. As amended, the anticipated level of fees and revenues only applies to those deposited to the credit of the state highway fund. Including the reference to the Texas Mobility Fund is not technically correct because it is funded with bond proceeds rather than fees and revenue.

Amendments to §16.151(b)(4) delete the word "revenue" and replace it with the word "funding." The focus of the forecasting assumptions is on the broader concept of all available funding regardless of the source, rather than the more limited concept of revenue.

Amendments to §16.151(c)(2) delete the word "cooperate" and replace it with the word "collaborate." This change is consistent with wording used to describe the working relationship between the department and transportation entities in multiple provisions of the Transportation Code as provided for by Senate Bill 1420.

Amendments to §16.152(b)(1) add the phrase "state and federal" to clarify the types of funding sources available for transportation projects that must be identified in the department's cash flow forecast.

Amendments to §16.152(f) add "unified transportation program" to clarify that the estimated funding levels derived from the cash flow forecast will be used to determine the amount of funding and allocate funding for that programming document. This change is consistent with the current meaning of the paragraph and wording mandated by Transportation Code, §201.992 and §201.993 in Senate Bill 1420.

Amendments to §16.153 correct and clarify the language and meaning of several provisions. In §16.153(a)(3) the phrase "Texas Mobility Fund" is added to complete the description of the types of funding included in Category 3 Non-Traditionally Funded Transportation Projects. In §16.153(a)(12) the phrase "and provide pass-through toll financing for local communities" is deleted from Category 12 Strategic Priority because that type of funding is also included in the description of Category 3 Non-Traditionally Funded Transportation Projects where it is more appropriately located. In §16.153(b) the phrase "ten-year unified transportation program described in §16.105 of this chapter" is deleted and replaced with the more concise acronym "UTP." In §16.153(b)(2) the phrase "multimodal related" is deleted because it is redundant and unnecessary. In §16.153(b)(2) the word "federal" is deleted because state funding may also be used and the limitation to federal caused an incorrect statement. In §16.153(b)(4) the phrase "water related projects including" is added to make the sentence grammatically correct.

Amendments to §16.154 add a classification reference to each of the highway related program funding categories to identify whether the funding category is a project specific (projects specifically selected and identified for funding in the UTP) or allocation program (responsibility for selecting projects and managing the allocation of funds are delegated to districts, selected administrative offices of the department, and MPOs). The phrase "as an allocation program" is added to §16.154(a)(1), (4) - (7), (c)(2), and (4). The phrase "for specific projects" is added to §16.154(a)(2), (c)(1) and (6). In §16.154(c)(3) the phrase "Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program" is added to Category 8 Safety. In §16.154(c)(5) the phrase "generally funded as an allocation program with some specific projects designated under miscellaneous federal programs" is added to Category 10 Supplemental Transportation Projects. The classifications are consistent with current treatment of the program funding categories and these changes provide certainty and transparency.

New §16.154(d) is added to define the phrase "allocation program." The phrase refers to a type of program funding category identified in the UTP for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and let to contract with the cost of each project to be deducted from the allocated funds available for that category. The definition is consistent with current treatment of the program funding categories and this addition provides certainty and transparency.

New §16.154(e) is added to describe the process for listing projects in the UTP. The department will list the projects that the department intends to develop and let during the ten-year UTP and will reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program and specific projects may be selected in the future, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. Since maintenance projects are usually small, have multiple locations in a contract, and are short term, it is not feasible to list all of these projects. Accordingly, Category 1 Preventive Maintenance and Rehabilitation is identified in this new subsection as an exception to the listing requirements. These changes are consistent with the project listing concept mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

New §16.154(f) is added to impose a requirement that in distributing funds to the districts, MPOs, and other authorized entities, the department may not exceed the cash flow forecast. This change is mandated by Transportation Code, §201.997 in Senate Bill 1420.

Amendments to §16.156(b)(1) add the phrase "or otherwise reduce funding" to expand the prohibition against the department decreasing an allocation to a district or MPO because of the failure of a region to include toll projects in a region's transportation plan, participation by a political subdivision in the funding of a transportation project including use of money from a transporta-

tion reinvestment zone, or revenue received by the department under a comprehensive development agreement and used to finance the construction of projects in the region. This change is mandated by Transportation Code, §222.109 in House Bill 563.

Amendments to §16.156(b)(1)(B) add a reference to "§222.108" to expand those Transportation Code references that authorize use of money collected in a transportation reinvestment zone. This change is necessary to be consistent with Transportation Code, §222.108 in House Bill 563 that authorizes money collected in a transportation reinvestment zone to be used for municipality and county selected transportation projects that are not pass-through toll projects.

New §16.156(c) adds language that prohibits the department from reducing the amount of funding previously committed to a particular transportation project because a transportation reinvestment zone is designated in connection with that project. This change is consistent with the wording and concept mandated by Transportation Code, §222.109 in House Bill 563.

In §16.160(c) the word "proportionally" is deleted because after a significant change in the department's funding and an authorized change in the allocation of funds to a program funding category under §16.160(b), the commission has the discretion to adjust allocations to individual districts and MPOs to best meet the commission's goals and the needs of the state. The adjustment may not be proportionate in every instance.

SUBCHAPTER E. PROJECT, PERFORMANCE, AND FUNDING REPORTING

Amendments to §16.201(a) - (c) add wording to clarify the scope of existing provisions. The word "funding" is added to the section title and to subsections (a) and (b) to more accurately describe that the department's reporting systems involve funding information as well as project and performance information. The phrase "under the jurisdiction of the department" is added to subsection (c) to clarify that the department's responsibility for providing information extends only to roads over which the department has legal control.

New §16.201(d) and (e) add responsibilities for the department to provide annual reports for both its project reporting system under §16.202 and its performance reporting system under §16.203 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues. These two subsections consolidate and replace the same reporting requirements that currently exist in §16.202(c) and (d) and §16.203(f) and (g). The existing provisions are deleted by amendments to those two sections. New §16.201(d) also adds responsibilities for the department to provide annual reports for both its project reporting system under §16.202 and its performance reporting system under §16.203 to political subdivisions located in a district that is the subject of the report. This change is mandated by Transportation Code, §201.809 in Senate Bill 1420.

Amendments to §16.202(a) make grammatical changes to replace the phrase "work plan" with the phrase "work program," add the phrase "in a district" to clarify that the work program focuses on transportation projects in that particular unit of the department's jurisdiction around the state, and move the language concerning the method of computing the four year period from its existing location of text in §16.202(a)(1) to §16.202(a).

Amendments to §16.202(a)(2) expand the requirements for reporting on each project in the work program. The work program must contain: the status of the project; each source of funding, the funding category to which the project has been assigned, and the project's priority within the category; an identification of each phase and benchmark of project development, including environmental clearance, right of way acquisition or possession, utility adjustment or coordination, completion of plans, specifications, and estimates, award of construction contract, and completion of construction; project schedule with estimated timelines for completing each applicable benchmark; summary of progress that identifies whether the project is being completed on-time and on-budget; and a list of department employees responsible for the project and contact information for each person listed. These changes are mandated by Transportation Code, §201.807 and §201.808 in Senate Bill 1420.

New §16.202(a)(3) adds to the requirements for reporting on each major transportation project in the work program. The work program must also contain for each major transportation project: the estimated cost of each phase of project development; and the progress on each applicable benchmark of the project that identifies whether the project is being completed on-time and on-budget. These changes are mandated by Transportation Code, §201.809 and §201.998 in Senate Bill 1420.

Amendments to §16.202(b) expand the types of transportation projects that are subject to an annual review of the benchmarks and timelines by deleting specific references to projects funded under certain program funding categories and adding the phrase "included in the work program." Amendments also add three specific subjects that must be included in the annual report: the status of each project identified as a high priority in the UTP; a summary of the number of statewide project implementation benchmarks that have been completed; and information about the accuracy of previous department financial forecasts. These changes are mandated by Transportation Code, §201.809 and §201.998 in Senate Bill 1420.

Amendments to §16.202 delete subsection (c) and (d) regarding the department's obligation to provide annual reports for its project reporting system under §16.202 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues. These subsections were consolidated with other annual reporting obligations and moved to new §16.201(d) and (e).

Amendments to §16.203(b)(1) expand and specify the type of project development phases that must be reported on as part of the required performance measures for evaluating the effectiveness of the department's expenditures on the statewide transportation system in achieving its transportation goals. The performance measure now covers the percentage of transportation projects for which the project development phases, including environmental clearance, right of way acquisition or possession, utility adjustment or coordination, completion of plans, specifications, and estimates, and award of construction contract are completed on or before the planned implementation timelines and on-budget. This change is consistent with references in §16.202(a) to work program reporting requirements and with concepts mandated by Transportation Code, §201.808 and §201.998 in Senate Bill 1420.

New §16.203(d) adds three types of information to the department's reporting system: reports prepared by the department

or an institution of higher education that evaluate the effectiveness of the department's expenditures on transportation projects to achieve the transportation goals identified by the statewide long-range transportation plan; information about the condition of bridges on the state highway system; and information about the condition of the pavement for each highway on the state highway system. These changes are mandated by Transportation Code, §201.808 in Senate Bill 1420.

Amendments to §16.203(e) delete the phrases "project and" and "for performance measures" from the description of the performance reporting system. This change more accurately describes the performance reporting system required under §16.203.

Amendments to §16.203 delete subsections (f) and (g) concerning the department's obligation to provide annual reports for its project reporting system under §16.203 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues. These subsections were consolidated with other annual reporting obligations and moved to new §16.201(d) and (e).

Amendments to §16.204(a)(1) add a more detailed description of the source of department funds for the purpose of developing an account information reporting system. The source is defined as "for the department's funds whether from the state highway fund, bond proceeds, or revenue from a comprehensive development agreement or a toll project." This change is mandated by Transportation Code, §201.808 in Senate Bill 1420.

New §16.204(b) adds more detailed reporting requirements for the department's funding and expenditures. The department will report on the funding and expenditures as applicable by each: district; program funding category; and source of funds. This change is mandated by Transportation Code, §201.807 and §201.808 in Senate Bill 1420.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

Marc D. Williams, Director of Planning, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Williams has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to enhance the department's formalized transportation planning and programming process to increase its transparency, predictability, and balance. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 10:00 a.m. on Thursday, June 7, 2012, at 200 Riverside Drive, Building 200, Room 1A.1, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact (512) 463-6086 at least five working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§16.2, 16.4, 16.51 - 16.55, 16.101 - 16.105, new §16.106, and amendments to §§16.151 - 16.154, 16.156, 16.160, and 16.201 - 16.204 may be submitted to Marc D. Williams, Director of Planning, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2012. In accordance with Transportation Code, §201.810(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §16.2, §16.4

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.2. Definitions and Acronyms.

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

(1) Chief financial officer--The chief financial officer of the department, or that officer's designee.

(2) Chief planning and project officer--The chief administrative officer of the department in charge of project planning and development, or that officer's designee.

(3) [~~(1)~~] Clean Air Act (CAA)--The Clean Air Act of 1970 and Amendments of 1990 (42 U.S.C. §7401 et seq.), including procedures that apply to all transportation plans, programs, and projects as they relate to air quality.

(4) [~~(2)~~] Commission--The Texas Transportation Commission.

(5) [~~(3)~~] Conformity--Clean Air Act requirements that ensure that federal funding and approval are given to transportation plans, programs, and projects that are consistent with the air quality goals established by the State Implementation Plan.

(6) [~~(4)~~] Corridor--A broad geographic band with no predefined size or scale that follows a general directional flow, providing for the movement of people and freight and connecting major sources of transportation trips. It involves a nominally linear transportation service area that may contain a number of streets, highways, rail, utility, and public transportation route alignments.

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

(8) [~~(6)~~] District--One of the geographic areas into which the department is divided in order to conduct its primary work activities.

(9) [~~(7)~~] District engineer--The chief administrative officer in charge of a district, or that officer's designee.

(10) [~~(8)~~] Environmental Protection Agency (EPA)--The agency of the federal government with broad responsibilities for environmental protection and enforcement, including air quality, as it relates to this chapter.

(11) [~~(9)~~] Executive director--The executive director of the department or the executive director's designee.

(12) [~~(10)~~] Federal discretionary programs--Programs that provide the U.S. Department of Transportation with discretion to award funds for specific projects outside of the normal transportation fund formulas. The U.S. Congress may designate the projects that are eligible for discretionary program funds and the scope of discretion may vary depending on the applicable statutory provisions.

(13) [~~(11)~~] Federal Highway Administration (FHWA)--The federal agency primarily responsible for highway transportation.

(14) Federal Railroad Administration (FRA)--The federal agency primarily responsible for railroad transportation.

(15) [~~(12)~~] Federal Transit Administration (FTA)--The federal agency primarily responsible for public transportation.

(16) [~~(13)~~] Governor--The governor of the State of Texas.

(17) [~~(14)~~] Letting--The official act of opening contractors' bids for a proposed highway improvement contract to construct, reconstruct, or maintain a segment of the state highway system, or to construct or maintain a building or other facility appurtenant to a building.

(18) [~~(15)~~] Local transportation entity--An entity that participates in the transportation planning process. The term includes but is not limited to:

(A) a metropolitan planning organization;

(B) a rural planning organization;

(C) a regional tollway authority organized under Transportation Code, Chapter 366;

(D) a regional transportation authority operating under Transportation Code, Chapter 452;

(E) a metropolitan rapid transit authority operating under Transportation Code, Chapter 451;

(F) a rural transit district as defined by Transportation Code, §458.001;

(G) a coordinated county transportation authority operating under Transportation Code, Chapter 460;

(H) a rural rail transportation district operating under Transportation Code, Chapter 172; and

(I) a commuter rail district operating under Transportation Code, Chapter 174.

(19) [~~(16)~~] Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan transportation planning process.

(20) [~~(17)~~] Mexican ports of entry--Connections between Mexico and the State of Texas at international bridge crossings of 5,000 vehicles or more average daily traffic.

(21) [~~(18)~~] Mobility projects--Transportation projects that add additional mainlanes to an existing highway facility or construct lanes on a new location and have a length of at least one mile, or any projects that otherwise improve transportation facilities for highways, public transportation, or other modes of transportation to decrease travel time and the level or duration of traffic congestion, and to increase the safe and efficient movement of people and freight.

(22) [~~(19)~~] On-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.

(23) [~~(20)~~] Planning organization--A metropolitan planning organization, a rural planning organization, or, for an area that is not in the boundaries of a metropolitan planning organization or a rural planning organization, a district.

(24) [~~(21)~~] Public transportation--Transportation of passengers and their hand carried packages or baggage on a regular or continuing basis by means of surface or water conveyance by a public or private entity that receives financial assistance from the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, the department, or a local political subdivision.

(25) [~~(22)~~] Routes--All or a portion of a selected course of travel between two specific geographic locations.

(26) [~~(23)~~] Rural planning organization (RPO)--A voluntary organization created and governed by local elected officials with responsibility for transportation decisions at the local level, including an organization established by a council of governments or regional planning commission designated by the governor pursuant to Local Government Code, Chapter 391, to address rural transportation priorities and planning and provide recommendations to the department for areas of the state not included in the boundaries of a metropolitan planning organization.

(27) [~~(24)~~] Rural transportation improvement program (RTIP)--A staged, multiyear, intermodal program of transportation

projects and public transportation projects developed by the department, in consultation with local officials, for areas of the state outside of the metropolitan planning area boundaries. The RTIP includes a financially constrained plan that demonstrates how the program can be implemented.

(28) [~~(25)~~] State Implementation Plan (SIP)--The latest approved version of the state adopted plan promulgated for each nonattainment or maintenance area to achieve or maintain compliance with the national ambient air quality standards required by the federal Clean Air Act.

(29) [~~(26)~~] Subarea--A geographic area with no predefined size or scale that is located within the boundaries of a designated metropolitan planning area.

(30) [~~(27)~~] Surface Transportation Program (STP)--The funding program established by 23 U.S.C. §133.

(31) [~~(28)~~] Texas Commission on Environmental Quality (TCEQ)--The state agency responsible for coordination of natural resources and air quality for the state, including development of the State Implementation Plan.

(32) [~~(29)~~] Texas Highway Trunk System--A rural network of four-lane or better divided roadways that will serve as a principal connector of all Texas cities with over 20,000 population as well as major ports and points of entry, not to exceed a total system mileage of 11,500 centerline miles.

(33) [~~(30)~~] Transportation control measure (TCM)--Any measure used for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

(34) [~~(31)~~] Transportation management area (TMA)--An urbanized area with a population over 200,000 as defined by the U.S. Bureau of the Census and designated by the U.S. Secretary of Transportation, or any additional area where transportation management area designation is requested by the governor and the metropolitan planning organization and designated by the U.S. Secretary of Transportation.

(35) [~~(32)~~] Transportation project--The planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance of a bridge, highway, toll road or toll road system, or railroad, enhancement of a roadway that increases the safety of the traveling public, air quality improvement initiative, or transportation enhancement activity under 23 U.S.C. §101.

(36) Transportation reinvestment zone (TRZ)--An area created and designated by a municipality or county under Transportation Code, §§222.106 - 222.108, to promote and fund one or more transportation projects as authorized under that section.

(37) [~~(33)~~] Unified Planning Work Program (UPWP)--The governing planning document, prepared by an MPO on an annual or biennial [~~bi-annual~~] basis, which identifies the transportation planning work to be undertaken within the metropolitan planning area for the applicable period.

(b) Acronyms. The following acronyms, when used in this chapter, are abbreviations for the associated terms. If an associated term is not defined under subsection (a) of this section, a reference is provided to the section in this chapter in which the term is primarily described.

(1) CAA--Clean Air Act.

(2) EPA--Environmental Protection Agency.

(3) FHWA--Federal Highway Administration.

(4) FRA--Federal Railroad Administration.

(5) [~~(4)~~] FTA--Federal Transit Administration.

(6) [~~(5)~~] MPO--Metropolitan planning organization.

(7) [~~(6)~~] MTP--Metropolitan transportation plan, as described in §16.53 of this chapter (relating to Metropolitan Transportation Plan).

(8) [~~(7)~~] RPO--Rural planning organization.

(9) [~~(8)~~] RTIP--Rural transportation improvement program.

(10) RTP--Rural transportation plan, as described in §16.55 of this chapter (relating to Long-Range Transportation Planning Recommendations for Non-Metropolitan Areas).

(11) [~~(9)~~] SIP--State implementation plan.

(12) [~~(10)~~] SLRTP--Statewide long-range transportation plan, as described in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan).

(13) [~~(11)~~] STIP--Statewide transportation improvement program, as described in §16.103 of this chapter (relating to Statewide Transportation Improvement Program).

(14) [~~(12)~~] STP--Surface transportation program.

(15) [~~(13)~~] TCEQ--Texas Commission on Environmental Quality.

(16) [~~(14)~~] TCM--Transportation control measure.

(17) [~~(15)~~] TIP--Transportation improvement program, as described in §16.101 of this chapter (relating to Transportation Improvement Program).

(18) [~~(16)~~] TMA--Transportation management area.

(19) TRZ--Transportation reinvestment zone.

(20) [~~(17)~~] UPWP--Unified planning work program.

(21) [~~(18)~~] UTP--Unified transportation program, as described in §16.105 of this chapter (relating to Unified Transportation Program).

§16.4. Introduction.

(a) Explanation of process. An effective transportation planning and programming process requires continuous cooperation among many state, local, and federal transportation entities and the integration of numerous requirements imposed by state and federal law. It is a multi-step process that is more dynamic than static and more circular than linear. The process includes development by the department, metropolitan planning organizations (MPO), and rural planning organizations (RPO) of separate but interrelated long-range planning documents that identify projects, strategies, and transportation needs, mid-range programming documents that contain a listing of prioritized projects expected to be ready for implementation in identified future years, and short-range programming documents that contain a listing of prioritized projects that are likely to be implemented. Underlying the planning and programming process is the need to develop reliable financial assumptions and forecasts for common use by all participants at all levels of the process. Finally, there is the allocation of available state and federal resources by the department and MPOs to fund individual projects that will address the long-range needs and goals. Strategic performance measures are used to monitor and evaluate the effectiveness of the process and its participants and to identify areas that need improvement.

(b) Document overview. The planning and programming process involves a number of documents that have similar names and overlapping functions.

(1) In this chapter, unless the context indicates otherwise, the words plan or planning refer to documents that identify projects, strategies, and transportation needs over an extended period of years to provide for the ultimate development and implementation of an integrated multimodal transportation system. Long-range planning documents include the:

(A) statewide long-range transportation plan (SLRTP); [~~and~~]

(B) metropolitan transportation plan (MTP); and [.]

(C) rural transportation plan (RTP).

(2) In this chapter, unless the context indicates otherwise, the words program or programming refer to that part of the transportation planning process that identifies a prioritized list of transportation projects proposed for implementation in a specified number of years in the foreseeable future with funding that is reasonably anticipated to be available at the designated time. Programming documents include the:

(A) ten-year statewide unified transportation program (UTP);

(B) four-year metropolitan transportation improvement program (TIP);

(C) four-year rural transportation improvement program (RTIP); and

(D) four-year statewide transportation improvement program (STIP).

(3) The planning and programming documents are more particularly described in subsections (c) - (e) of this section.

(c) Long-range planning documents.

(1) The statewide long-range transportation plan (SLRTP) is a comprehensive, statewide multimodal transportation plan that covers a period of [~~at least~~] 24 years and serves as the defining vision for the state's transportation system and services. It is comprised of two components: a priority based listing of projects that are expected to be developed within the financial constraint of forecasted state and federal funding levels, and a non-financially constrained component that identifies projects, strategies, and other needs that could be developed if additional funding resources become available. The SLRTP considers the long-range plans and strategies of the metropolitan and rural planning organizations and identifies the state's transportation goals, measurable targets, and priority projects and corridors. It also includes the statewide transportation program developed under §16.103 of this chapter (relating to Statewide Transportation Improvement Program (STIP)) and the unified transportation program developed under §16.105 of this chapter (relating to Unified Transportation Program (UTP)).

(2) A metropolitan transportation plan (MTP) is a long-range plan developed by each MPO for areas within its boundaries, that covers a period of at least 20 years and contains a priority based listing of projects for long-range, mid-range, and short-range strategies that are expected to be developed within the financial constraint of forecasted state, federal, and local funding levels. The funding levels are estimated in cooperation with the department. The first four years of the MTP will be developed to comply with federally mandated transportation improvement program (TIP) and statewide transportation improvement program (STIP) requirements and to identify those projects that have a high probability of implementation during the four-year period.

(3) A rural transportation plan (RTP) is a long-range plan developed by the department for areas not included in the boundaries of a metropolitan planning organization, that covers a period of at least 20 years, contains a priority based listing of projects for long-range strategies that lead to the development of an integrated intermodal transportation system, and becomes a component of the statewide long-range transportation plan.

(d) Mid-range programming document. The unified transportation program (UTP) is a ten-year financially constrained program developed by the department that represents an intermediate timeframe in the statewide project development process. The UTP includes all of the projects, or phases of projects, covered in the four-year statewide transportation improvement program (STIP) plus those projects, or phases of projects, within the state that the department anticipates can proceed to letting within the six year period after the four-year STIP [~~next six years~~]. A project's inclusion in the UTP also represents a commitment to its continued development.

(e) Short-range programming documents.

(1) A transportation improvement program (TIP) is a short-range program developed by each MPO in cooperation with the department and with public transportation operators as defined by 23 C.F.R. Part 450 that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area. Projects may include planning, engineering, design, right of way acquisition, [~~and~~] construction, and maintenance. The TIP also contains an estimate of available state, federal, and local funding and the estimated project expenditures. A project's inclusion in the TIP and statewide transportation improvement program (STIP) generally represents a commitment that it is programmed for implementation in the near term.

(2) A rural transportation improvement program (RTIP) is a short-range program developed by the department in cooperation with rural planning organizations (RPO) that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in all areas of the state outside of metropolitan planning areas. Projects may include planning, engineering, design, right of way acquisition, [~~and~~] construction, and maintenance. The RTIP also contains an estimate of available state, federal, and local funding and the estimated project expenditures. A project's inclusion in the RTIP and statewide transportation improvement program (STIP) generally represents a commitment that it is programmed for implementation in the near term.

(3) A statewide transportation improvement program (STIP) is a four-year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs (TIP), together with rural transportation improvement programs (RTIP), that include recommendations from RPOs and department districts for the areas of the state that are outside of the boundaries of an MPO, including transportation between cities. The STIP identifies a list of projects to be implemented statewide with [~~reasonably available~~] funds that are reasonably expected to be available over a multi-year period. The first year of the STIP contains projects that are scheduled for letting of [~~construction~~] contracts by the project sponsor. The remaining three years identify projects and funding sources that also have a high probability of implementation. [~~In addition, in nonattainment and maintenance areas, funding for~~

~~projects in the first and second years of the STIP must be available or committed.~~]

(f) Flow chart. A graphic flow chart and description of the documents, interactions, and time frames involved in the planning and programming process is shown in the following figure.
Figure: 43 TAC §16.4(f)

(g) Limits of section. This section and the flow chart designated Figure: 43 TAC §16.4(f) are for illustrative purposes only and shall not be construed or interpreted to abridge, enlarge, modify, or otherwise change the responsibilities, requirements, and procedures described in this chapter.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202152
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER B. TRANSPORTATION PLANNING

43 TAC §§16.51 - 16.55

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.51. Responsibilities of Metropolitan Planning Organizations (MPO).

(a) General. Pursuant to 23 U.S.C. §134 and 49 U.S.C. §5303, as implemented by 23 C.F.R. Part 450, the metropolitan planning organization (MPO), in cooperation with the department and with public transportation operators as defined by 23 C.F.R. Part 450, shall be responsible for carrying out the metropolitan transportation planning process. The MPO, department, and public transportation operators shall cooperatively determine their mutual responsibilities in the conduct of the planning process, including corridor refinement (e.g., feasibility and major investment) studies. They shall cooperatively develop the unified planning work program (UPWP), metropolitan transportation plan (MTP) containing a long-range forecast of proposed projects and transportation improvement program (TIP) containing a list of projects that have been approved for development in the near-term. The MPO, department, and public transportation operators shall coordinate the development of the MTP and TIP with other providers of transportation, such as 14 C.F.R. Part 139 airport sponsors, maritime port operators, and rail operators. All transportation plans and programs developed by the MPO as part of the planning process must comply with federal requirements and provide for public involvement.

(b) Membership of MPOs. According to 23 C.F.R. Part 450, each MPO that serves a transportation management area shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate state transportation officials.

(c) Approval of boundaries. The governor or the commission, if the approval authority has been delegated to the commission, must approve the boundaries of a designated metropolitan planning area and any revision of those boundaries. Approval of the boundaries of a designated metropolitan planning area by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) is not required. The MPO must provide the governor and the department with appropriate documentation and the rationale supporting any recommended boundary change. The MPO must provide its approved metropolitan planning area boundary maps to the department for submission to the FHWA, FTA, and other applicable federal agencies.

(d) Metropolitan planning area agreements.

(1) Planning agreement [~~contract~~]. The responsibilities for cooperatively carrying out transportation planning (including corridor and subarea studies) and programming shall be clearly identified in a planning agreement [~~contract~~] between the department and the MPO.

(2) MPO-public transportation operator planning agreement. There shall be a written agreement between the MPO, the department, and public transportation operators as defined by 23 C.F.R. Part 450 that specifies cooperative procedures for carrying out transportation planning (including corridor and subarea studies) and programming as required by this subchapter.

(3) Agreements in nonattainment MPOs. If the metropolitan planning area includes part but not all of a nonattainment or maintenance area, as defined by the federal Clean Air Act (CAA), there shall be a written agreement among the department, the Texas Commission on Environmental Quality (TCEQ), affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area. The agreement shall be in accordance with federal requirements.

(4) Coordination of planning processes. If more than one MPO has authority within an urbanized area or a nonattainment or maintenance area, there shall be a written agreement between the department and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for that area. The TCEQ and any local air quality agencies must also be parties to an agreement that relates to a nonattainment or maintenance area.

(e) Coordination with state implementation plan (SIP) development. In nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the state implementation plan (SIP) development process, including the development of any transportation control measures (TCMs). The MPO shall develop or assist in developing the TCMs, which may include any measure used for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. The MPO shall not approve any metropolitan transportation plan or transportation improvement program which does not conform with the SIP, as determined in accordance with Environmental Protection Agency (EPA) conformity regulations.

(f) Metropolitan planning in areas with multiple MPOs. If more than one MPO has authority in a metropolitan planning area (including multistate metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs, the governor, and the governor's counterpart in any other involved state shall cooperatively establish the boundaries of the metropolitan planning area (including the 20-year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the states to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. While an individual MPO's metropolitan transportation plan and transportation improvement program may be developed separately, each plan and transportation improvement program must be consistent with the plans and transportation improvement programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis, and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of the unified planning work program and various planning products (e.g., the metropolitan transportation plan and transportation improvement program) to the department for further transmittal to the FHWA, FTA, and other applicable federal agencies.

§16.52. Unified Planning Work Program (UPWP).

(a) Planning activities. Under 23 C.F.R. Part 450, an MPO is required to document planning activities in a unified planning work program (UPWP) to indicate who will perform the work, the schedule for completing it, and all products that will be produced. The department is responsible for assisting in the development of the UPWP, approving the format of work programs submitted by metropolitan planning organizations (MPOs), and, where required by federal law or regulation, monitoring an MPO's performance of activities and expenditure of funds under a UPWP. Where monitoring is not required, the department is responsible for reviewing an MPO's activities and expenditure of funds, and will comment on and make suggestions relating to those activities and expenditures.

(1) Requirements. An MPO, in cooperation with the department and public transportation operators as defined by 23 C.F.R. Part 450, must annually or biennially [~~bi-annually~~] develop a UPWP that meets federal requirements.

(2) UPWP development. The department will develop a time line for development of the UPWP by the MPOs. Failure to adhere to the time line may result in a delay in the authorization to the MPOs to proceed in incurring costs.

(3) UPWP format. The department, in consultation with the MPOs, shall develop a standard UPWP format to be used by all MPOs. UPWPs submitted in a different format will not be approved.

(4) UPWP approval and revisions. The MPO policy board must approve the UPWP and any subsequent revisions, and shall not delegate the approval authority.

(5) Annual performance and expenditure report. To allow the department to monitor work programs, the MPOs shall prepare and submit to the department an annual performance and expenditure report of progress no later than December 15 [~~31~~] of each year. A uniform format for the annual report will be established by the department, in consultation with the MPOs.

(b) Funding. Federal transportation planning funds are available to MPOs to develop the metropolitan transportation plans and transportation improvement programs required by this subchapter. Under 23 C.F.R. Part 420, the use of federal planning funds must be documented by the MPO in a work program acceptable to the FHWA setting out proposed work undertaken with federal planning funds and the estimated cost of this work. A work program acceptable to the FTA and other applicable federal agencies is required for planning activities involving public transportation plans and programs.

(1) Requirements. The UPWP shall reflect transportation planning work tasks to be funded by federal, state, or local transportation, or transportation related (e.g. air quality) planning funds.

(2) Planning work eligibility. The use of federal metropolitan transportation planning funds shall be limited to transportation planning activities affecting the transportation system within the boundaries of a designated metropolitan planning area. If an MPO determines that data collection and analysis activities relating to land use, demographics, or traffic or travel information, conducted outside its boundaries, affects the transportation system within its boundaries, then those activities may be undertaken using federal planning funds, if the activities are specifically identified in an approved UPWP. Any other costs incurred for transportation planning activities outside the boundaries of a designated metropolitan planning area are not eligible for reimbursement.

(3) Authorization for travel outside the state. The department will approve proposed travel outside the State of Texas by MPO staff and other agencies participating in the MPO planning process if the travel is funded with federal transportation planning funds. The MPO must receive approval prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel is at the request of the department. Travel to the State of Arkansas by the Texarkana MPO staff and travel to the State of New Mexico by the El Paso MPO staff shall be considered in-state travel.

(4) Reimbursement of travel costs of elected officials. The cost of travel incurred by elected officials serving on an MPO policy board is eligible for reimbursement with federal transportation planning funds if the costs are:

(A) specifically related to a federal award, including a grant, cost reimbursement contract, or other agreement between a state, local, or Indian tribal government and the federal government;

(B) necessary and reasonable for the proper and efficient performance and administration of the federal award;

(C) not prohibited under:

(i) federal lobbying restrictions; or

(ii) state or local laws or regulations; and

(D) approved by the awarding federal agency prior to incurring any costs associated with the actual travel.

(5) Funding limitations. The use of federal transportation planning funds is limited to corridor/subarea level planning or multimodal or systemwide transit planning studies, unless otherwise authorized by federal law or regulation. [~~Major investment studies and environmental studies are considered corridor level planning. Unless otherwise authorized by federal law or regulation, the use of such funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.~~]

(6) Department approval of costs. The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments (i.e., adding new work tasks or changing the scope of existing work tasks) prior to receiving approval from the department. Any costs incurred prior to receiving department approval are not eligible for reimbursement from federal transportation planning funds.

(7) Expenditure limitations. Costs incurred by the MPO shall not exceed the total budgeted amount of the UPWP without prior approval of the MPO policy board and the department. Costs incurred on individual work tasks shall not exceed that task budget by 25 percent without prior approval of the MPO policy board and the department. If the costs exceed 25 percent of the task budget, the UPWP shall be revised, approved by the MPO policy board, and submitted to the department for approval.

(8) Distribution of funds. The department will make available to MPOs all federal metropolitan planning funds and provide the required non-federal match as authorized by the commission. The department will distribute federal transportation planning funds to the MPOs based on a formula developed by the department, in consultation with the MPOs, and approved by FHWA, FTA, and other applicable federal agencies.

§16.53. Metropolitan Transportation Plan (MTP).

(a) Requirements. Pursuant to 23 C.F.R. Part 450, each metropolitan planning organization (MPO) shall develop a metropolitan transportation plan (MTP) to address at least a 20-year planning horizon and include both long-range and short-range strategies or actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and freight. The MTP is cooperatively developed by the MPO, the department, and public transportation operators as defined by 23 C.F.R. Part 450. The MTP must be based on the funding assumptions and forecasts set forth in §16.151 and §16.152 of this chapter (relating to Long-Term Planning Assumptions and Cash Flow Forecast, respectively) and the frequency and cycle for development, updates, and revisions of the MTP must coincide and be compatible with the statewide long-range transportation plan approval and update process described in §16.54 of this subchapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(b) Development. Development of a metropolitan transportation plan (MTP) and all updates and revisions shall be conducted in accordance with federal regulations. Each project in the MTP shall be assigned a unique project number.

(c) Approval. Each metropolitan transportation plan must be approved by the applicable MPO. Prior to any approval, there must be adequate opportunity for public involvement in the development of the plan, in accordance with federal regulations.

(d) Submission of new and revised plans. Copies of any new or revised MTPs must be submitted to the governor, or to the department if the governor delegates this authority to the commission, for information purposes. Copies must also be provided to the FHWA, FTA, and other applicable federal agencies.

(e) MTP public participation. Each MPO will develop a public participation process covering the development of an MTP in accordance with federal regulations. The MPOs shall also use the same process in amending the MTP.

§16.54. Statewide Long-Range Transportation Plan (SLRTP).

(a) General. In compliance with Title 23 U.S.C. §135, as implemented by 23 C.F.R. Part 450 and Transportation Code, Chapter 201, Subchapter H, the department will develop a statewide long-range transportation plan (SLRTP) covering a period of [~~not less than~~] 24 years that provides for the development and implementation of a transportation system and contains all modes of transportation, including:

(1) the systems and facilities for highways and toll roads [~~turnpikes~~], aviation, public transportation, railroads and high-speed railroads, waterways, pedestrian walkways, and bicycle transportation facilities; and

(2) the transportation users of each type of transportation facility.

(b) Requirements. The plan must:

(1) include the statewide transportation program developed under §16.103 of this chapter (relating to Statewide Transportation Improvement Program (STIP));

(2) include the unified transportation program developed under §16.105 of this chapter (relating to Unified Transportation Program (UTP));

(3) [~~(1)~~] contain specific, long-term transportation goals for the state, including efforts to maintain a safe [~~maintenance of the existing~~] transportation system, address travel [~~reduction of~~] congestion [~~throughout the state, enhancement of safety~~], and connect Texas communities [~~promotion of economic development~~];

(4) [~~(2)~~] contain specific, measurable targets for each transportation goal;

(5) [~~(3)~~] consider the projects and strategies adopted by each metropolitan planning organization and rural planning organization in the organization's long-range plans;

(6) [~~(4)~~] identify priority corridors, projects, or areas of the state that are of particular concern to the department in meeting the goals established under paragraph (3) [~~(1)~~] of this subsection; and

(7) [~~(5)~~] contain a participation plan for obtaining input on the goals, measurable targets, projects, and priorities under this section from other state agencies, political subdivisions, metropolitan planning organizations, rural planning organizations, local transportation entities, other officials who have local responsibility for the various modes of transportation, and members of the general public.

(c) Financial considerations. The plan must include:

(1) a component that is financially constrained and identifies proposed projects and strategies; and

(2) a component that is not financially constrained and identifies corridors, projects, strategies, and other needs in various areas of the state including transportation improvements designed to relieve congestion.

(d) Integration of plans and policy efforts. In developing each of the department's transportation plans and policy efforts, the department will clearly reference the SLRTP and specify how the plan or policy effort supports or otherwise relates to the specific, long-term transportation goals described in subsection (b) of this section.

(e) [~~(d)~~] Updates. The department will update the plan every four years or more frequently as necessary. An amendment, update, or revision of the STIP or the UTP is an administrative modification to the plan and does not require an update to the SLRTP.

(f) [~~(e)~~] Public involvement during development of the SLRTP.

(1) The department will seek to effectively engage the general public and stakeholders [~~provide adequate opportunity for public involvement~~] in development of the SLRTP.

(2) The department will hold public meetings throughout the state that will cover each district [~~divide the state into regions and hold at least one public meeting in each region~~] during development of the SLRTP and each update of the plan. The public meetings will be held as early as the department determines is feasible to assure public input into the planning process. The department will publish notice

of each public meeting as appropriate to maximize attendance at the meeting.

(3) The department will report its progress on the plan to participants at the meeting and provide an opportunity for a free exchange of ideas, views, and concerns relating to proposed transportation goals, measurable targets, projects, and priorities. A representative from each district [~~located wholly or partially within a region~~] will attend each public meeting applicable to the district [~~of that region~~] and be available for the discussion.

(4) The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(g) [~~(f)~~] Public involvement prior to final adoption. The department will hold at least one statewide hearing prior to final adoption of the SLRTP by the commission and before final adoption of any update to the plan by the commission.

(1) The department will publish a notice of a hearing in the *Texas Register* a minimum of 15 days prior to its being held and in the notice will inform the public where written comments may be sent.

(2) The department will accept written public comments, including comments submitted in electronic format, for a period of at least 30 days after the date the notice appears in the *Texas Register*.

(3) At the time the notice of hearing is published under paragraph (1) of this subsection and until the SLRTP or update is finally adopted, the department will make a copy of the SLRTP or an update to the plan available for review at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin. A copy will also be available on the department website.

(h) [~~(g)~~] Publication. The department will publish the adopted [~~or updated~~] SLRTP, updates, and administrative modifications on the department's website. The SLRTP will also be available for review at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin.

§16.55. Long-Range Transportation Planning Recommendations for Non-Metropolitan Areas.

(a) Requirements. The department, in cooperation with rural planning organizations, and municipalities, counties, public transportation operators, and other local transportation entities operating outside the boundaries of a metropolitan planning organization, will develop a rural transportation plan (RTP) for areas of the state not included in the boundaries of a metropolitan planning organization to address at least a 20-year planning horizon and include long-range strategies or actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and freight. The RTP must be based on the funding assumptions and forecasts set forth in §16.151 and §16.152 of this chapter (relating to Long-Term Planning Assumptions and Cash Flow Forecast, respectively) and the content and frequency and cycle for development, updates, and revisions of the RTP must coincide and be compatible with the statewide long-range transportation plan approval and update process described in §16.54 of this subchapter (relating to Statewide Long-Range Transportation Plan (SLRTP)). [~~A rural planning organization (RPO) shall make recommendations to the department concerning transportation projects, systems, or programs that impact the area within the boundaries of the RPO over the 24-year statewide long-range transportation plan horizon as provided for in §16.54 of this subchapter (relating to Statewide Long-Range Transportation Plan (SLRTP)), including strategies that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and freight. For an area that is outside of the boundaries of an MPO and an RPO, those long-range planning recommendations will be made by the district engineer of the district in which the area is located. All recommendations shall be delivered to the department at the times and in the manner and format established by the department and shall include:~~]

(b) Development. The department will develop and implement a public involvement process covering development of the RTP as appropriate to maximize public participation. A rural planning organization (RPO) shall make recommendations to the department concerning transportation projects, systems, or programs that impact the area within the boundaries of the RPO over the 24-year statewide long-range transportation plan horizon as provided for in §16.54 of this subchapter, including strategies that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and freight. For an area that is outside of the boundaries of an MPO and an RPO, those long-range planning recommendations will be made by the department. All recommendations shall be delivered to the department at the times and in the manner and format established by the department and shall include:

(1) a prioritized list of mobility projects, rehabilitation projects as described in §16.153(a)(1) of this chapter (relating to Funding Categories), [~~and~~] safety projects as described in §16.153(a)(8) of this chapter, and major transportation projects as described in §16.106 of this chapter (relating to Major Transportation Projects), for the area covered by the recommendation [~~within its boundaries~~]; and

(2) for each listed project, an estimate of project costs as approved by the district or districts in which the project is located.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202153
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §§16.101 - 16.106

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.101. Transportation Improvement Program (TIP).

(a) Requirements. Title 23 U.S.C. §134 and 23 C.F.R. Part 450, require the metropolitan transportation planning process to include the development of a transportation improvement program (TIP) for the metropolitan planning area, containing a list of projects that have been approved for development in the near term. The list must be prioritized by the category of funding described in §16.153 of this chapter (relating to Funding Categories) and by project within each funding category as described in §16.105(b) of this subchapter (relating to Unified Transportation Program (UTP)). An approved TIP is then included in the statewide transportation improvement program (STIP) which contains a listing of projects for all areas of the state that are likely to be implemented in that identified four-year period.

(b) Development of transportation improvement program (TIP). The MPO designated for a metropolitan planning area, in cooperation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall develop a TIP and financial plan in accordance with federal requirements. The department will provide an MPO with estimates of available federal and state funds to be used in developing the financial plan in accordance with §16.152 of this chapter (relating to Cash Flow Forecast). The TIP shall cover the metropolitan planning area and shall be approved and amended in accordance with subsection (h) of this section. The TIP shall be updated and approved at least every two years.

(c) Grouping of projects. Projects that are not considered by the department and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, or work type (e.g., minor rehabilitation, preventive maintenance). In nonattainment and maintenance areas, classification must be consistent with the exempt project classifications contained in the EPA conformity regulations.

(d) Projects excluded. The following projects may be excluded from the TIP by agreement between the department and the MPO:

(1) safety projects funded under 23 U.S.C. §402 (highway safety programs) and emergency relief projects, except those involving substantial functional, location, and capacity changes;

(2) planning and research activities, except those activities funded with National Highway System or Surface Transportation Program funds other than those used for major investment studies; and

(3) projects under 23 U.S.C. §104(b)(1), (b)(4), and §144 that are for resurfacing, restoration, rehabilitation, reconstruction, or highway safety improvement, and which will not alter the functional traffic capacity or capability of the facility being improved.

(e) Consistency and conformity.

(1) Relationship to the metropolitan transportation plan (MTP). A project in the TIP must be consistent with the MTP.

(2) Relationship to the statewide long-range transportation plan (SLRTP). A project in the TIP must be consistent with the SLRTP developed under federal law and §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(3) Relationship to the Clean Air Act and State Implementation Plan. In nonattainment and maintenance areas, a project selected for the TIP must conform to the Clean Air Act (CAA) and the state implementation plan (SIP).

(4) Conformity requirements. The MPO in each urbanized nonattainment and maintenance area will be responsible for preparation of the conformity determination requirements of the CAA and the Environmental Protection Agency (EPA) conformity regulations. The department will be responsible for preparation of the conformity determination requirements in nonattainment and maintenance areas outside of metropolitan planning areas.

(f) Format. The department, in cooperation with the MPOs, will develop a uniform TIP format to produce a uniform statewide transportation improvement program (STIP). The department in consultation with the MPOs may make modifications to the format. The MPOs shall submit electronic and printed copies of their TIPs to the department in this format.

(g) Financial plan. A financial plan that demonstrates consistency with funding reasonably expected to be available during the relevant period shall be developed for TIPs by the MPO in cooperation with the department and public transportation operators. [~~In nonattainment areas, the plan must demonstrate that funding is available or committed for the first two years of the TIP.~~]

(h) Transportation improvement program (TIP) approval. The MPO and the governor shall approve the TIP and any amendments. If the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, will approve transportation improvement programs if the executive director finds the TIP has met all federal requirements and the requirements of this subchapter, including satisfaction of the project selection criteria developed for the department's unified transportation program, as set forth in §16.105(d) of this subchapter [~~(relating to Unified Transportation Program (UTP))~~].

(i) Management. As a management tool for monitoring progress in implementation of the metropolitan transportation plan, the TIP shall identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP and any changes in priorities from previous TIPs in accordance with the factors specified in federal regulations and §16.105(d) of this subchapter.

(j) Updating. The frequency and cycle for updating the TIP must be compatible with the statewide transportation improvement program (STIP) development process established by the department and described in §16.103 of this subchapter (relating to Statewide Transportation Improvement Program (STIP)).

(k) Modification.

(1) Amendments. The transportation improvement program (TIP) may be amended consistent with the procedures established in this section for its development and approval with the following stipulations.

(A) An amendment to the TIP is required in attainment areas if there is a change:

(i) adding or deleting a federally funded project in the TIP;

(ii) in the scope of work of a federally funded project;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a federally funded project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year; or

(v) in funding sources or funding availability that forces the addition or deletion of federally funded projects.

(B) An amendment to the TIP is required in nonattainment areas if there is a change:

(i) adding or deleting a project in the TIP;

(ii) in a project's design concept or scope of work;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year;

(v) adding Congestion Mitigation and Air Quality funding to a previously approved project; or

(vi) in funding from non-federal funding to any combination of federal funding or federal and state funding, or where the change in funding sources or funding availability forces the addition or deletion of federally funded projects or regionally significant state funded projects.

(C) An amendment to the transportation improvement program (TIP) is not required if there is a change:

(i) in funding sources, except as provided in this subsection;

(ii) in the cost estimate of a project where, unless federal law or regulation specifies a different cost estimate percentage and condition relating to waiver of the amendment requirement for a particular type of project, [~~where~~] such change is not greater than 50 percent of the approved cost estimate and the revised cost estimate is less than $1,500,000, and the change in the cost estimate is not caused by a change in the project work scope or limits;

(iii) in the letting date of a project unless, in nonattainment areas, the change affects conformity; or

(iv) that is administrative and does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination.

(2) Conformity requirements. In nonattainment and maintenance areas for transportation related pollutants, a conformity determination must be made on any new or amended TIPs (unless the amendment consists entirely of projects exempt under subsection (c) of this section) in accordance with CAA requirements and the EPA conformity regulations.

(l) Transportation improvement program (TIP) relationship to statewide transportation improvement program (STIP). After approval, the TIP will be included without modification in the STIP except that in nonattainment and maintenance areas, the FHWA and the FTA must make a conformity determination before inclusion. The department will notify the MPO and appropriate federal agencies when a TIP has been included in the STIP.

(m) TIP public participation. Each MPO will develop a public participation process covering the development of a TIP in accordance with federal regulations. The MPOs shall also use the same procedures in amending the TIP.

(n) Project selection procedures. Under federal regulations, project selection from an approved transportation improvement program (TIP) varies depending on whether a project selected for implementation is located in a transportation management area and what type of federal funding is involved.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas.

(A) Project agreement. The first year of both the TIP and the statewide transportation improvement program (STIP) constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and transit appropriations, are significantly more or less than the authorized funds. In such cases, and if requested by the MPO, the department, or the transit operator, a revised agreed to list of projects for project selection purposes may be developed.

(B) Eligibility. Only projects included in the federally approved STIP will be eligible for funding with Title 23 U.S. Code or Federal Transit Act (49 U.S.C. §5307 et seq.) funds.

(2) Project selection in non-transportation management areas. In an area not designated as a transportation management area, the commission or the affected public transportation operator as defined by 23 C.F.R. Part 450, as applicable, in cooperation with the MPO, will select projects to be implemented using federal funds from the approved TIP. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

(3) Project selection in transportation management areas (TMAs). In an area designated as a TMA, an MPO, in consultation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall select from the approved TIP and in accordance with the priorities of the approved TIP, all Title 23 U.S. Code and Federal Transit Act (49 U.S.C. §5307 et seq.) funded projects, except projects on the National Highway System and projects funded under the bridge, interstate maintenance, safety, and federal lands highways programs. The commission, in cooperation with the MPO, will select projects on the National Highway System and projects funded under the bridge, interstate maintenance, and safety programs. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

§16.102. Rural Transportation Improvement Program (RTIP).

(a) Development. As required by 23 U.S.C. §135 and 23 C.F.R. Part 450, the [~~The~~] department will develop transportation improvement programs for all areas of the state outside of metropolitan planning areas, containing a prioritized list of projects approved for development in the near term. The rural transportation improvement program (RTIP) will be developed in cooperation with rural planning organizations (RPO) and projects will be selected in accordance with federal regulations and the requirements of this subchapter including §16.105 (relating to Unified Transportation Program (UTP)). An approved RTIP is then included in the statewide transportation improvement program (STIP) which contains a listing of projects for all areas of the state that are likely to be implemented in that identified four-year period.

(b) Grouping of projects. Projects that are not considered by the department and the RPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, or work type (e.g., minor rehabilitation, preventive maintenance). In nonattainment and maintenance areas, classification must be consistent with the exempt project classifications contained in the EPA conformity regulations.

(c) Approval. The commission, or the executive director, if delegated to the executive director, will approve an RTIP if the executive director finds that the RTIP has met all federal requirements and the requirements of this subchapter.

(d) Updating. The frequency and cycle for updating an RTIP must be compatible with the statewide transportation improvement program (STIP) development process described in §16.103 of this subchapter (relating to Statewide Transportation Improvement Program (STIP)).

(e) Modification. The RTIP may be amended consistent with the requirements established in §16.101(k) of this subchapter (relating to Transportation Improvement Program (TIP)).

(f) Relationship to the statewide long-range transportation plan (SLRTP). A project in the RTIP must be consistent with the SLRTP developed under federal law and §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(g) Relationship to the Clean Air Act (CAA) and State Implementation Plan (SIP). In nonattainment and maintenance areas, a project selected for the RTIP must conform to the CAA and the SIP.

(h) Relationship to statewide transportation improvement program (STIP). After approval, RTIPs will be included in the STIP, except that a federal determination of conformity must be made for nonattainment and maintenance areas that are outside of metropolitan planning areas before projects in that area may be included in the STIP.

(i) Rural public involvement process.

(1) Initial adoption. Each district will coordinate with the applicable rural planning organization (RPO), if any, to develop and implement a public involvement process covering the development of an RTIP. The district will publish [~~At a minimum, the process must consist of the publication of a~~] notice concerning the proposed RTIP as appropriate to maximize public participation [~~in a newspaper with general circulation in each county within the district~~]. The notice will:

(A) inform the public of the availability of the proposed RTIP;

(B) inform the public that a public meeting [~~hearing~~] will be held to receive comments on the initial adoption of the proposed RTIP, that there will be a public comment period after the date of the meeting [~~hearing~~], and the length of the comment period, which must be at least ten days;

(C) request that public comments concerning the proposed RTIP be submitted in writing to the district; and

(D) be published at least ten days before the date of the meeting [~~hearing~~].

(2) Revisions involving mobility projects. Each district will publish notice concerning proposed revisions to the RTIP involving mobility projects as appropriate to maximize public participation. [~~Each district will, at a minimum, publish, in a local newspaper of general circulation, a notice informing the public of the availability of revisions to the RTIP involving mobility projects and of a ten-day public comment period~~]. The notice will reference the proposed revisions to the RTIP instead of the proposed adoption of the RTIP, but will otherwise conform to the notice requirements of paragraph (1) of this subsection [~~request public comments to be submitted, in writing, to the district, and also will notify the public that a public hearing will be conducted to receive comments on the proposed revision~~].

(j) Project selection. The department will develop and annually reevaluate project selection procedures for state projects that lie outside of metropolitan planning areas in accordance with §16.103(g) of this subchapter [~~(relating to Statewide Transportation Improvement Program (STIP))~~].

§16.103. Statewide Transportation Improvement Program (STIP).

(a) Purpose. Title 23 U.S.C. §135, as implemented by 23 C.F.R. Part 450, requires each state to carry out a continuing, comprehensive, and intermodal statewide transportation planning process that facilitates the efficient, economic movement of people and freight in all areas of the state, including those areas subject to federal metropolitan planning requirements.

(b) Statewide transportation improvement program (STIP) development. The department, in cooperation with the MPOs designated for metropolitan areas and RPOs designated for areas that are not within the boundaries of an MPO, will develop a STIP covering a period of four years for all areas of the state in accordance with federal requirements. The STIP includes all of the transportation improvement programs (TIP) and rural transportation improvement programs (RTIP) approved in accordance with requirements established in §16.101 and §16.102 of this subchapter (relating to Transportation Improvement Program (TIP) and Rural Transportation Improvement Program (RTIP), respectively).

(1) Projects included.

(A) A highway or transit project funded under Title 23 U.S. Code or the Federal Transit Act (49 U.S.C. §5307 et seq.) will be included in a federally approved STIP. A project in the STIP will be consistent with the statewide long-range transportation plan, metropolitan transportation plan, and transportation improvement program, and the STIP will reflect expected funding and priorities for programming.

(B) Projects that are not considered by the department and MPO to be of appropriate scale for individual identification in a given program year (e.g., minor rehabilitation, preventive maintenance, non-urbanized transit projects) may be grouped by function, geographic area, or work type.

(C) In a nonattainment area, only those projects determined to conform to the requirements of the Clean Air Act and which comply with the state implementation plan may be included in the STIP.

(D) Regionally significant projects to be funded with non-federal funds will be included in the STIP for planning, coordination, and public disclosure purposes.

(E) Projects may be excluded from the STIP by agreement between the department and the MPO in accordance with requirements established in §16.101(d) of this subchapter.

(2) Statewide transportation improvement program (STIP) funding. The federal funding level for each year of the STIP is the annual authorization as outlined in 23 U.S.C. §101 et seq. and funds appropriated under 49 U.S.C. §5307 et seq., in addition to the appropriate state and local match.

(c) Statewide transportation improvement program (STIP) financial plan. The STIP will reflect the priorities for programming and expenditure of funds and will:

(1) include a financial plan that demonstrates how the transportation improvements can be funded and reasonably implemented;

(2) be consistent with funding reasonably expected to be available during the relevant period as provided under the unified transportation program in §16.105 of this subchapter (relating to Unified Transportation Program (UTP)); and

(3) be financially constrained by year.

(d) Statewide transportation improvement program (STIP) public involvement process. The governor is responsible for providing for public involvement in the STIP development process. If the governor delegates this responsibility to the commission, the commission, or if further delegated, the executive director, will provide for public involvement in accordance with this subsection.

(1) Initial adoption of the STIP. The department will hold at least one statewide public hearing regarding the adoption of the proposed STIP.

[~~(A) The department will provide adequate opportunity for public involvement in development of the STIP.~~]

[~~(B) The department will divide the state into regions and hold at least one public meeting in each region during development of the STIP as early as the department determines is feasible to assure public input into the process. The department will publish notice of each public meeting as appropriate to maximize attendance at the meeting.~~]

[~~(C) The department will report its progress on the program and provide a free exchange of ideas, views, and concerns relating to proposed projects and priorities. A representative from each district located wholly or partially within a region will attend each public meeting of that region and be available for the discussion.~~]

[~~(D) In developing the STIP, the department will hold at least one statewide public hearing regarding the adoption of the proposed STIP.~~]

(A) [~~(i)~~] The department will publish a notice of the hearing in the *Texas Register* a minimum of 15 days prior to it being held and will inform the public where to send any written comments.

(B) [~~(ii)~~] The department will accept written public comments, including comments submitted in electronic format, for a period of at least 30 days after the date the notice appears in the *Texas Register*.

(C) [~~(iii)~~] A copy of the proposed STIP will be available for review, at the time the notice of hearing is published, at each of the district offices, at the department's Transportation Planning and Programming Division offices in Austin, and on the department website.

(D) [~~(iv)~~] A STIP must be approved in accordance with subsection (e) of this section.

(E) [~~(v)~~] The approved STIP will be made available at each of the district offices, at the department's Transportation Planning and Programming Division offices in Austin, and on the department website.

(2) STIP amendments.

(A) General. The governor will approve amendments to the STIP. If the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, will approve amendments according to a published schedule developed in accordance with subsection (f) of this section, which the department will make available at the district offices, to the MPOs, and on the department website on an annual basis.

(B) Amendments to the STIP. The STIP may be amended consistent with the requirements established in §16.101(k) of this subchapter. The public involvement process for amendments to the STIP will be the same as for initial adoption of the STIP.

(e) Statewide transportation improvement program (STIP) approval.

(1) The governor will approve the STIP. The governor, or if the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, must approve the STIP if it finds the STIP has met all the requirements of this section and that it satisfies the project selection criteria developed for the department's unified transportation program, as set forth in §16.105(d) of this subchapter [~~(relating to Unified Transportation Program (UTP))~~].

(2) The governor, or if the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, may approve a partial STIP if difficulties are encountered in cooperatively developing the TIP portion for a particular metropolitan or rural area.

(f) Statewide transportation improvement program (STIP) revisions.

(1) Schedule of revisions. The department and the MPOs are required to adhere to a quarterly STIP revision cycle, except as provided in paragraph (2) of this subsection. Project information and MPO approval documentation for the quarterly revisions must be received by the department's Transportation Planning and Programming Division by the close of business on the submittal date established by the department.

(2) Exceptions.

(A) Request. An MPO or the department may submit a written request for an exception to the quarterly revision schedule. The request must include reasons justifying the need for the exception.

(B) Approval of request. The executive director may approve an exception to this requirement if:

(i) additional funding becomes available; or

(ii) the revision involves a project which is expected to have a significant effect on capacity, connectivity, or public safety and security on transportation systems.

(g) Project selection procedures. Under 23 C.F.R. §450.220, project selection from an approved STIP depends on whether a project selected for implementation is located in or outside of a metropolitan planning area and on the type of federal funding involved. The purpose of this subsection is to prescribe project selection procedures and specify which entity may select a project for implementation.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas. The department will develop and reevaluate annual project selection procedures for state projects that lie outside of metropolitan planning areas.

(A) Project agreement. The first year of both the TIP and the STIP constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and public transportation appropriations, are significantly more or less than the authorized funds. In such cases, if requested by the MPO, the department, or the public transportation operator, a revised agreed-to list of projects for project selection purposes may be developed.

(B) Eligibility. Except as provided in 23 C.F.R. §450.220, only those projects included in the federally approved STIP will be eligible for funding with Title 23 U.S. Code or Federal Transit Act (49 U.S.C. §5307 et seq.) funds.

(2) Project selection in metropolitan planning areas. In metropolitan planning areas, transportation projects shall be selected in accordance with the project selection procedures established in §16.101(n) of this subchapter [~~(relating to Transportation Improvement Program (TIP))~~].

(3) Project selection outside metropolitan planning areas. Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with Title 23 funds and under the bridge and interstate maintenance programs shall be selected by the department in consultation with affected local officials. Federal lands highways projects shall be selected in accordance with 23 U.S.C. §204. Other transportation projects undertaken with funds administered by the FHWA shall be selected by the department in cooperation with the

affected local officials, and projects undertaken with Federal Transit Act funds shall be selected by the department in cooperation with the affected local officials and public transportation operators.

§16.104. Ten-Year Transportation Programming Recommendations for Non-Metropolitan Areas.

A rural planning organization (RPO) shall make recommendations to the department concerning the prioritization of projects and programs in the department's unified transportation program under §16.105 of this subchapter (relating to Unified Transportation Program (UTP)) to be developed within the boundaries of the RPO. For an area that is outside of the boundaries of an MPO and an RPO, the programming recommendations will be made by the department [~~applicable district engineer~~]. All recommendations shall be delivered to the department at the times and in the manner and format established by the department and must include a prioritized list of projects with input from officials of affected municipalities, counties, and local transportation entities.

§16.105. Unified Transportation Program (UTP).

(a) General. The department will develop a unified transportation program (UTP) that covers a period of ten years to guide the development and authorize construction and maintenance of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. In developing the UTP, the department will collaborate with local transportation entities [~~cooperate with metropolitan planning organizations (MPO), rural planning organizations (RPO),~~] and public transportation operators as defined by 23 C.F.R. Part 450.

(b) Requirements. The UTP [~~program~~] will:

(1) be financially constrained and estimate funding levels and the allocation of funds to each district, [~~and~~] metropolitan planning organization (MPO), and other authorized entity for each year in accordance with Subchapter D of this chapter (relating to Transportation Funding);

(2) list all projects and programs that the department intends to develop, or on which the department intends to initiate construction or maintenance, during the UTP period, and the applicable funding category to which a project or program is assigned, [~~during the program period,~~] after consideration of the:

(A) statewide long-range transportation plan (SLRTP);

(B) metropolitan transportation plans (MTP);

(C) transportation improvement programs (TIP);

(D) MPO annual reevaluations of project selection in MTPs and TIPs in accordance with subsection (c) of this section;

(E) statewide transportation improvement programs (STIP); [~~and~~]

(F) recommendations of rural planning organizations (RPO) as provided in this subchapter; and

(G) list of major transportation projects in accordance with §16.106 of this subchapter (relating to Major Transportation Projects);

(3) be organized by funding category, district, mode of transportation, and the year a project is scheduled for development or letting; and [~~construction.~~]

(4) designate the priority ranking within a program funding category of each listed project in accordance with subsection (d)(2) of this section.

(c) MPO annual reevaluation of project selection. An MPO shall annually reevaluate the status of project priorities and selection in its approved metropolitan transportation plan (MTP) and transportation improvement program (TIP) and provide a report of any changes to the department at the times and in the manner and format established by the department. The reevaluation must be consistent with criteria applicable to development of the MTP and TIP in accordance with federal requirements.

(d) Project selection.

(1) The commission will consider the following criteria for project selection in the UTP as applicable to the program funding categories described in §16.153 of this chapter (relating to Funding Categories):

(A) the potential of the project to meet transportation goals for the state, including efforts to:

(i) maintain a safe [~~increase the safety of the~~] transportation system for all transportation users;

(ii) address travel congestion [~~maintain and preserve the existing transportation system~~];

(iii) connect Texas communities; and [~~provide congestion relief;~~]

(iv) accomplish any additional transportation goals for the state identified in the statewide long-range transportation plans as provided in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)); [~~increase the accessibility and mobility of the transportation system for all transportation users;~~]

~~*[(v)*~~ ~~support the economic vitality of the area, especially by enabling global competitiveness, productivity, and efficiency; and]~~

~~*[(vi)*~~ ~~promote efficient system management and operation; and]~~

(B) the potential of the project to assist the department in attainment of the measurable targets for the transportation goals identified in subparagraph (A) of this paragraph; and

(C) [~~(B)~~] adherence to all accepted department design standards as well as applicable state and federal law and regulations.

(2) The department will establish criteria to rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category and classified as tier one, tier two, or tier three for ranking purposes. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(3) [~~(2)~~] The commission will determine and approve the final selection of projects and programs to be included in the UTP, except for the selection of federally funded projects by an MPO serving in an area designated as a transportation management area (TMA) as provided in §16.101(n) of this subchapter (relating to Transportation Improvement Program (TIP)). A federally funded project selected by an MPO designated as a TMA will be approved by the commission, subject to:

(A) satisfaction of the project selection criteria in paragraph (1) of this subsection;

(B) compliance with federal law; and

(C) the district's and MPO's allocation of funds for the applicable years.

(e) Approval of unified transportation program (UTP). Not later than August [~~March~~] 31 of each [~~even-numbered~~] year, the commission will adopt the unified transportation program for the next fiscal year. The UTP may be updated more frequently if necessary to authorize a major change to one or more funding allocations or project listings in the most recent UTP. The department [~~commission~~] will hold a hearing prior to:

(1) final adoption of the UTP and any updates; and

(2) approval of any adjustments to the program resulting from changes to the allocation of funds under §16.160 of this chapter (relating to Funding Allocation Adjustments).

(f) Administrative [~~Program~~] revisions.

(1) The UTP may be administratively revised at any time for minor or nondiscretionary changes to funding allocations and project listings, including the changes specified in this paragraph. [~~A project may be added to the UTP, or a project within the UTP may be moved forward or delayed if the status of a listed project or projects change, and if the moved or added project can be developed and let during a two-year period within the district's or MPO's allocated funds in the applicable program funding category for that period;~~

~~(ii) the project and funding for the project is specifically identified in a commission minute order for pass-through toll financing; or~~

~~(iii) the project and funding for the project is specifically identified in a federal or state legislative act or appropriation, including a federal earmark.~~

~~(B) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer all or a portion of its allocated funds either within a program funding category or between program funding categories during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable program funding category as listed in the UTP is not exceeded or reduced.~~

~~(C) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer all or a portion of its allocated funds from a program funding category to another district or MPO during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable program funding category for each district and MPO as listed in the UTP is not exceeded or reduced.~~

~~(D) A local government may provide additional funding contribution or participation for a project.~~

~~(E) A district may transfer all or a portion of its allocated funds in a program funding category to an adjoining district for a project that extends across the districts' common boundary.~~

~~(F) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer any unspent excess allocated funds remaining in a program funding category at the end of a fiscal year to the same program funding category for the next fiscal year.~~

~~(G) Projects that are listed only for informational purposes in program funding categories identified as allocation programs in §16.154 of this chapter (relating to Transportation Allocation Funding Formulas) may be added to or deleted from the categories.~~

(2) The department, an MPO, an RPO, or a public transportation operator as defined by 23 C.F.R. Part 450 may request an administrative [a] revision of the UTP. A revision request by a public transportation operator must be applicable to projects in the public transportation portion of the UTP and, if the public transportation operator is located within the boundaries of an MPO or RPO, it must obtain consent of the applicable MPO or RPO prior to making the request. [~~If a revision is requested, the department will, in coordination with the other affected parties, determine whether a revision is appropriate and may, consistent with the authority to select projects under subsection (d) of this section, develop a revised list of projects for the applicable period. A revision under this subsection is not an update or adjustment to which subsection (e) of this section applies.~~]

~~(3) If an administrative revision is requested, the department will, in coordination with the other affected parties, determine whether a revision is appropriate and may, consistent with the authority to select projects under subsection (d) of this section, develop a revised list of projects for the applicable period.~~

~~(4) An administrative revision under this subsection is not an update or adjustment to which subsections (e), (g), and (h) of this section apply.~~

~~(5) The department will incorporate an administrative revision into the UTP if the request complies with the requirements of this subsection and compliance is confirmed by the chief planning and project officer. If a requested revision is a minor or nondiscretionary change to a funding allocation or project listing in the UTP, but does not comply with the specific requirements described for changes in paragraph (1) of this subsection, the requested revision may not be incorporated into the UTP unless it is also approved by the chief financial officer. In determining whether to approve the administrative revision request, the chief financial officer shall consider the fiscal impact of the requested revision in the context of the current cash flow forecast.~~

~~(6) Department staff will provide a written report to the commission within two months after the end of each quarter identifying all administrative revisions implemented under this subsection during that quarter.~~

(g) Public involvement during development of the unified transportation program.

(1) The department will seek to effectively engage the general public and stakeholders [~~provide adequate opportunity for public involvement~~] in development of the UTP.

(2) The department will hold public meetings throughout the state that will cover each district [~~divide the state into regions and hold at least one public meeting in each region~~] during development of the UTP [~~and each update of the program~~] as early as the department determines is feasible to assure public input into the process. The department will also hold public meetings throughout applicable areas of the state during development of each update to the program that will cover each district affected by the update. The department will publish

notice of each public meeting as appropriate to maximize attendance at the meeting.

(3) The department will report its progress on the program and provide an opportunity for a free exchange of ideas, views, and concerns relating to project selection, funding categories, level of funding in each category, the [~~each region's~~] allocation of funds for each year of the program, and the relative importance of the various selection criteria. A representative from each district [~~located wholly or partially within a region~~] will attend each public meeting applicable to the district [~~of that region~~] and be available for the discussion.

(4) The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(h) Public involvement prior to final adoption. The department, prior to adoption of the unified transportation program and approval of any updates to the program, will hold at least one statewide hearing on its project selection process including the UTP's funding categories, the level of funding in each category, the [~~each region's~~] allocation of funds for each year of the program, and the relative importance of the various selection criteria.

(1) The department will publish a notice of the applicable hearing in the *Texas Register* a minimum of 15 days prior to it being held and will inform the public where to send any written comments.

(2) The department will accept written public comments for a period of at least 30 days after the date the notice appears in the *Texas Register.*

(3) A copy of the proposed project selection process, the UTP, and any adjustments to the plan, as applicable, will be available for review at the time the notice of hearing is published at each of the district offices and at the department's Transportation Planning and Programming [~~Finance~~] Division offices in Austin. A copy will also be available on the department website.

(i) Publication. The department will publish the entire approved unified transportation program, updates, [~~and~~] adjustments, and administrative revisions together with any summary documents highlighting project benchmarks, priorities, and forecasts on the department's website. The documents will also be available for review at each of the district offices and at the department's Transportation Planning and Programming [~~Finance~~] Division offices in Austin.

§16.106. Major Transportation Projects.

(a) Criteria. For the purposes of this chapter, a major transportation project is the planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance, of a bridge, highway, toll road, or toll road system on the state highway system that fulfills or satisfies a particular need, concern, or strategy of the department in meeting the transportation goals established under §16.105 of this subchapter (relating to Unified Transportation Program (UTP)). A project may be designated by the department as a major transportation project if it meets one or more of the criteria specified in this subsection.

(1) The project has a total estimated cost of $500 million or more. All costs associated with the project from the environmental phase through final construction, including adequate contingencies and reserves for all cost elements, will be included in computing the total estimated cost regardless of the source of funding. The costs will be expressed in year of expenditure dollars.

(2) There is a high level of public or legislative interest in the project.

(3) The project includes a significant level of local or private entity funding.

(4) The project is unusually complex.

(5) The project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need.

(b) List of projects. A list of major transportation projects will be annually updated and incorporated into the unified transportation program in accordance with §16.105 of this subchapter.

(c) Benchmarks. The progress of a major transportation project will be tracked and evaluated in accordance with §16.202 of this chapter (relating to Reporting System for Delivery of Individual Projects) based on benchmarks for planning, implementation, and construction of the project and timelines developed for that project. The benchmarks will include the:

(1) environmental clearance issued by the applicable federal or state authority;

(2) acquisition or possession of right of way parcels sufficient to proceed to construction in accordance with planned construction phasing;

(3) adjustment of utility facilities or coordination of adjustment sufficient to proceed to construction in accordance with planned construction phasing;

(4) 100 percent completion of plans, specifications, and estimates;

(5) award of construction contract by the commission; and

(6) completion of construction.

(d) Critical benchmarks.

(1) The first year of the unified transportation program is designated as the implementation phase of the UTP and a major transportation project may be listed in this phase only if the project:

(A) is listed in the statewide long-range transportation plan and the applicable metropolitan transportation plan; and

(B) has environmental clearance issued by the applicable federal or state authority.

(2) The executive director may approve an exception to the requirements contained in paragraph (1) of this subsection if:

(A) the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need; and

(B) there is a reasonable likelihood that environmental clearance for the project will be issued and the other required development benchmarks will be timely accomplished to permit an award of a construction contract within the one year implementation phase of the UTP.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202154

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Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
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SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §§16.151 - 16.154, 16.156, 16.160

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.151. Long-Term Planning Assumptions.

(a) Development. The department, in collaboration [~~cooperation~~] with local transportation entities [~~metropolitan planning organizations (MPO)~~], will develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts that are consistent with the project selection criteria prescribed under §16.105(d) of this chapter (relating to Unified Transportation Program (UTP)). The department and each planning organization will use those funding assumptions to coordinate and guide development of the metropolitan transportation plans, rural transportation plan, [~~and~~] statewide long-range transportation plan, transportation improvement programs, rural transportation improvement programs, statewide transportation improvement program, and unified transportation program under §§16.53 - 16.55, 16.101 - 16.103, and 16.105 [~~§16.53 and §16.54~~] of this chapter (relating to Metropolitan Transportation Plan (MTP), [~~and~~] Statewide Long-Range Transportation Plan (SLRTP), Long-Range Transportation Planning Recommendations for Non-Metropolitan Areas, Transportation Improvement Program (TIP), Rural Transportation Improvement Program (RTIP), and Statewide Transportation Improvement Program (STIP), respectively).

(b) Factors. The assumptions will include the following factors:

(1) anticipated level of available state gas tax revenues to be deposited to the credit of the state highway fund;

(2) anticipated level of registration fees and other state non-gas tax revenues to be deposited to the credit of the state highway fund [~~and the Texas Mobility Fund~~];

(3) anticipated level of federal transportation funding; and

(4) other factors considered appropriate by the commission for projection of available funding [~~revenue~~].

(c) Optional factors. In addition to the funding forecasts developed under subsection (b) of this section, an MPO may, in order to guide development of a separate supplement to the MPO's metropolitan transportation plan and its portion of the statewide long-range transportation plan, also include reasonable funding assumptions based on local funding options and contingent state, federal, and local funding sources.

(1) The supplement must:

(A) clearly identify and separate the funding forecasts developed by the department under subsection (b) of this section from the forecasts using assumptions based on local funding options and contingent funding sources;

(B) describe the rationale for incorporating each additional funding option and source; and

(C) be approved by the MPO policy board.

(2) The MPO will collaborate [~~cooperate~~] with the department in development of the additional funding assumptions.

§16.152. Cash Flow Forecast.

(a) Forecast. On or before September 1 of each year, the department's chief financial officer will issue a cash flow forecast for each source of funding that covers a period of not less than the 20 years following the date the forecast is issued and is based on the funding assumptions developed under §16.151 of this subchapter (relating to Long-Term Planning Assumptions).

(b) Requirements. The forecast must identify:

(1) all state and federal sources of funding available for transportation projects and projects involving aviation, public transportation, rail, and the state's waterways and coastal waters, including bond proceeds; and

(2) any limitations imposed by state or federal law on the use of the identified source.

(c) First two years. The first year or two years of the forecast, as appropriate, must be based on the amounts appropriated by the legislature to the department for that period.

(d) Updates. The department's chief financial officer will update the forecast more frequently than annually if significant changes in the department's funding occur.

(e) Publication. Each cash flow forecast and update will be available on the department's website for viewing by the public and the documents will be available for review at each of the district offices and at the department's Finance Division offices in Austin.

(f) Uses of forecast. The commission will use the cash flow forecast to estimate funding levels for each year of the unified transportation program as provided in §16.105 of this chapter (relating to Unified Transportation Program (UTP)), to determine the annual amount of funding in each of the program funding categories described in §16.153 of this subchapter (relating to Funding Categories), and to allocate funding to the districts, metropolitan planning organizations, and other authorized entities in accordance with §16.154 of this subchapter (relating to Transportation Allocation Funding Formulas).

(g) Funding definition. In this subchapter, unless the context clearly indicates otherwise, "funds" or "funding" means the estimates of federal, state, and local money reasonably expected to be available for expenditure on transportation projects and projects involving aviation, public transportation, rail, and the state's waterways and coastal waters during the relevant period.

§16.153. Funding Categories.

(a) Highway program funding categories. The ten-year unified transportation program (UTP) described in §16.105 of this chapter (relating to Unified Transportation Program (UTP)) will contain the following 12 program funding categories for highway related projects:

(1) Category 1 Preventive Maintenance and Rehabilitation - preventive maintenance and rehabilitation on the existing state highway system, including:

(A) Preventive maintenance - minor roadway modifications to improve operations and safety; and

(B) Rehabilitation - installation, rehabilitation, replacement, and maintenance of pavement, bridges, traffic control devices, traffic management systems, and ancillary traffic devices;

(2) Category 2 Metropolitan and Urban Corridor Projects - mobility and added capacity projects along a corridor that improve transportation facilities in order to decrease travel time and the level or duration of traffic congestion, and to increase the safe and efficient movement of people and freight in metropolitan and urbanized areas;

(3) Category 3 Non-Traditionally Funded Transportation Projects - transportation related projects that qualify for funding from sources not traditionally part of the state highway fund including state bond financing under programs such as Proposition 12 (General Obligation Bonds), Texas Mobility Fund, pass-through toll financing, unique federal funding, regional toll revenue, and local participation funding;

(4) Category 4 Statewide Connectivity Corridor Projects - mobility and added capacity projects on major state highway system corridors which provide statewide connectivity between urban areas and corridors, to create a highway connectivity network composed of the Texas Highway Trunk System, National Highway System, and connections from those two systems to major ports of entry on international borders and Texas water ports;

(5) Category 5 Congestion Mitigation and Air Quality Improvement - congestion mitigation and air quality improvement area projects to address attainment of a national ambient air quality standard in the nonattainment areas of the state;

(6) Category 6 Structures Replacement and Rehabilitation - replacement and rehabilitation of deficient existing bridges located on the public highways, roads, and streets in the state, construction of grade separations at existing highway-railroad grade crossings, and rehabilitation of deficient railroad underpasses on the state highway system;

(7) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - transportation needs within the boundaries of designated metropolitan planning areas of metropolitan planning organizations located in a transportation management area;

(8) Category 8 Safety - safety related projects both on and off the state highway system including the federal Highway Safety Improvement Program, Railway-Highway Crossing Program, Safety Bond Program, Safe Routes To School Program, and High Risk Rural Roads Program;

(9) Category 9 Transportation Enhancement - transportation related projects, including:

(A) categories outlined in federal law; and

(B) building new safety rest areas and visitor centers along the state highway system;

(10) Category 10 Supplemental Transportation Projects - transportation related projects that do not qualify for funding in other categories, including landscape and aesthetic improvement, erosion control and environmental mitigation, construction and rehabilitation of roadways within or adjacent to state parks, fish hatcheries, and similar facilities, replacement of railroad crossing surfaces, maintenance of railroad signals, construction or replacement of curb ramps for accessibility to pedestrians with disabilities, and miscellaneous federal programs;

(11) Category 11 District Discretionary - projects eligible for federal or state funding selected at the district engineer's discretion; and

(12) Category 12 Strategic Priority - projects with specific importance to the state including those that generally promote economic opportunity, increase efficiency on military deployment routes or to retain military assets in response to the federal military base realignment and closure reports, and maintain the ability to respond to both man-made and natural emergencies[, ~~and provide pass-through toll financing for local communities~~].

(b) Program funding categories for other modes of transportation and transportation infrastructure. The UTP [~~ten-year unified transportation program described in §16.105 of this chapter~~] will contain the following program funding categories for aviation, public transportation, rail, and the state's waterways and coastal waters projects:

(1) Aviation Capital Improvement Program - projects based on the anticipated funding levels of the Federal Aviation Administration Airport Improvement Program and the Texas Aviation Facilities Development Program for general aviation airport development in Texas;

(2) Public transportation [~~Transportation~~] - [~~multimodal related~~] projects based on the anticipated [~~federal~~] funding levels for public transportation including fixed route city bus service, rural demand response service, special transit service for elderly and persons with disabilities, and intercity bus service from city to city;

(3) Rail - rail related projects including light rail, freight rail, passenger rail, and high-speed rail; and

(4) State waterways and coastal waters - water related projects including lands, easements, and rights of way for the widening, deepening, and expansion of the main channel of the Gulf Intracoastal Waterway (GIWW), including beneficial use projects of dredged material, and other maritime related projects.

(c) Determination of funding allocations. The commission will determine, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (b) of this section, the amount of funds to be allocated to each program funding category for the appropriate period of time.

§16.154. Transportation Allocation Funding Formulas.

(a) Formula allocations. The commission will, subject to the mandates of state and federal law, allocate funds from program funding Categories 1, 2, 4, 5, 7, 9, and 11, as described in §16.153 of this subchapter (relating to Funding Categories), to the districts and metropolitan planning organizations (MPO) as follows:

(1) Category 1 Preventive Maintenance and Rehabilitation - will be allocated to all districts as an allocation program according to the following formulas:

(A) Preventive maintenance.

(i) Ninety-eight percent for roadway maintenance with 65 percent based on on-system lane miles, and 33 percent based on the pavement distress score Pace factor; and

(ii) Two percent for bridge maintenance based on square footage of on-system span bridge deck area;

(B) Rehabilitation. Thirty-two and one half percent based on three-year average lane miles of pavement distress scores less than 70, 20 percent based on on-system vehicle miles traveled per lane mile, 32.5 percent based on equivalent single axle load miles for on-system, off-system, and interstate, and 15 percent based on the pavement distress score Pace factor;

(2) Category 2 Metropolitan and Urban Corridor Projects - will be allocated to MPOs for specific projects in the following manner:

(A) 87 percent to MPOs operating in areas that are transportation management areas, according to the following formula: 30 percent based on total vehicle miles traveled on and off the state highway system, 17 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 10 percent based on lane miles on-system, 14 percent based on truck vehicle miles traveled on-system, 7 percent based on percentage of census population below the federal poverty level, 15 percent based on congestion, and 7 percent based on fatal and incapacitating vehicle crashes;

(B) 13 percent to MPOs operating in areas that are not transportation management areas, according to the following formula: 20 percent based on total vehicle miles traveled on and off the state highway system, 25 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 8 percent based on lane miles on-system, 15 percent based on truck vehicle miles traveled on-system, 4 percent based on percentage of census population below the federal poverty level, 8 percent based on centerline miles on-system, 10 percent based on congestion, and 10 percent based on fatal and incapacitating vehicle crashes;

(3) Category 4 Statewide Connectivity Corridor Projects - will be allocated to districts for specific projects selected by the commission based on engineering analysis of projects on three corridor types:

(A) Mobility corridors - congestion considerations in areas that are not in the boundaries of an MPO;

(B) Connectivity corridors - two-lane roadways requiring upgrade to four-lane divided roadways to connect the urban areas of the state; and

(C) Strategic corridors - strategic corridor additions to the state highway network;

(4) Category 5 Congestion Mitigation and Air Quality Improvement - will be allocated to districts and MPOs as an allocation program for projects in a nonattainment area population weighted by ozone and carbon monoxide pollutant severity;

(5) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - will be allocated to MPOs operating in areas that are transportation management areas as an allocation program based on the applicable federal formula;

(6) Category 9 Transportation Enhancement - One-half of the funds in this category will be allocated to MPOs operating in transportation management areas as an allocation program based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census; and

(7) Category 11 District Discretionary - will be allocated to all districts as an allocation program based on state legislative mandates, but if there is no mandate or the amount of available funding in this category exceeds the minimum required by a mandate, the funding allocation for this category or the excess funding, as applicable, will be allocated according to the following formula: 70 percent based on annual on-system vehicle miles traveled, 20 percent based on annual on-system lane miles, and 10 percent based on annual on-system truck vehicle miles traveled.

(b) Pace factor calculation. For purposes of subsection (a)(1) of this section, the Pace factor is a calculation used to adjust funding among districts according to increases or decreases in a district's need to improve its pavement distress scores. It will slow the rate of improvement for districts with the highest condition scores and accelerate the rate of improvement for districts with the lowest condition scores. The Pace factor is calculated by:

(1) determining the district with the highest distress score;

(2) determining the deviation of a district's distress score from the highest score;

(3) totaling the deviations for all districts as determined by paragraph (2) of this subsection [~~subsection (b)(2) of this section~~].

(c) Non-formula allocations. The commission, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (a) of this section, will determine the amount of funding to be allocated to a district, metropolitan planning organization, political subdivision, governmental agency, local governmental body, or recipient of a governmental transportation grant, from each of the following program funding categories described in §16.153 of this subchapter:

(1) Category 3 Non-Traditionally Funded Transportation Projects for specific projects;

(2) Category 6 Structures Replacement and Rehabilitation as an allocation program;

(3) Category 8 Safety Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program;

(4) Category 9 Transportation Enhancement - one-half of the funds in this category will be allocated under this subsection as an allocation program;

(5) Category 10 Supplemental Transportation Projects generally funded as an allocation program with some specific projects designated under miscellaneous federal programs;

(6) Category 12 Strategic Priority for specific projects;

(7) Aviation Capital Improvement Program;

(8) Public transportation [~~Transportation~~];

(9) Rail; and

(10) State waterways and coastal waters.

(d) Allocation program. For the purposes of this chapter, the term "allocation program" refers to a type of program funding category identified in the unified transportation program for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district, selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and let to contract with the cost of each project to be deducted from the allocated funds available for that category.

(e) Listing of projects. The department will list the projects that the department intends to develop and let during the ten-year unified transportation program (UTP) under §16.105 of this chapter (relat-

ing to Unified Transportation Program (UTP)), and reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. For the purpose of listing projects in the UTP, "project" does not include preventive maintenance and rehabilitation under Category 1 Preventive Maintenance and Rehabilitation as described in subsection (a) of this section.

(f) Limitation on distribution. In distributing funds to the districts, metropolitan planning organizations, and other entities described in subsections (a) and (c) of this section, the department may not exceed the cash flow forecast prepared and published in accordance with §16.152 of this subchapter (relating to Cash Flow Forecast).

(g) [~~(d)~~] Formula revisions. The commission will review and, if determined appropriate, revise both the formulas and criteria for allocation of funds under subsections (a) - (c) of this section at least as frequently as every four years.

§16.156. Limitation on Allocation of Funds.

(a) Toll project conditions. Neither the commission nor the department may require that a toll project be included in a region's transportation plan or program as a condition for the allocation of funds for the construction of projects in the region.

(b) Limitations on allocation decrease. Neither the commission nor the department may:

(1) revise a formula or otherwise reduce funding as provided in the unified transportation program under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), or a successor program, in a manner that results in a decrease of an allocation to a district or metropolitan planning organization (MPO) because of:

(A) the failure of a region to include toll projects in a region's transportation plan or program;

(B) participation by a political subdivision in the funding of a transportation project in the region, including the use of money collected in a transportation reinvestment zone (TRZ) under Transportation Code, §§222.106 - 222.108 [~~§222.106 or §222.107~~]; or

(C) payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement and used to finance the construction, maintenance, or operation of transportation projects or air quality projects in the region; or

(2) take any other action that would reduce funding allocated to a district or MPO without the prior consent of the MPO because of:

(A) the failure of a region to include toll projects in a region's transportation plan or program; or

(B) receipt by a region of payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement; or

(C) the need of another district or MPO for increased funding to complete a pending project.

(c) Limitation on reduction of committed funding. If a TRZ is designated in connection with a particular transportation project, neither the commission nor the department may reduce the amount of funding that was committed to the project because of that designation.

(d) [~~(c)~~] Financial assistance for toll projects. Nothing in this section precludes the commission or the department from using funds to design, develop, finance, construct, maintain, repair, or operate, or assist in the design, development, financing, construction, maintenance, repair, or operation of a toll project in a region.

§16.160. Funding Allocation Adjustments.

(a) Changes in funding. Changes in the allocation of funds under §16.153 or §16.154 of this subchapter (relating to Funding Categories and Transportation Allocation Funding Formulas, respectively) may result from significant changes in the department's funding.

(b) Allocation revisions. If a significant change in funding is identified by the department's chief financial officer in an updated cash flow forecast, the commission may revise the allocation of funds to each program funding category or from the program funding categories to the districts and metropolitan planning organizations (MPO) and may approve:

(1) a specific percentage increase or decrease in the allocation of funds and, subject to the mandates of state and federal law, apply the percentage change equally to each program funding category; or

(2) an increase or decrease in the allocation of funds to one or more program funding categories, after considering the:

(A) total amount of the change;

(B) priority of the funding category based on the category's relationship to the stated commission goals as provided in the statewide long-range transportation plan under §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(C) mandates of state and federal law; and

(D) best interests of the state.

(c) Adjustment of programs. After the commission approves a change in the allocation of funds to a program funding category under subsection (b) of this section, the funds allocated to individual districts and MPOs will be [~~proportionally~~] adjusted and the unified transportation program, statewide transportation improvement program, and metropolitan transportation improvement programs will be revised in accordance with the applicable change in funding. Specific projects will be advanced or delayed in the order of the planning organization's and department's listed priorities in the applicable programs.

(d) Preference for allocation of funding increases. If the allocation of funds to a district or MPO is reduced under subsection (c) of this section, any subsequent increase in the allocation of funds to the applicable program funding category will be allocated first to the accounts of the districts and MPOs that were previously reduced.

(e) Public involvement. The department will hold at least one statewide public hearing regarding a proposed change in the allocation of funds to a program funding category under this section with an available comment period of at least 30 days after the date the hearing notice appears in the *Texas Register* in accordance with the procedures set forth in §16.105(h) of this chapter (relating to Unified Transportation Program (UTP)).

(f) Publication. Documents describing each change in the allocation of funds to a program funding category will be available for viewing by the public on the department's website and at each of the district offices and at the department's Finance Division offices in Austin.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202155

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER E. PROJECT, PERFORMANCE, AND FUNDING REPORTING

43 TAC §§16.201 - 16.204

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.201. Project, [and] Performance, and Funding Reporting Systems [System].

(a) General. The department will establish project, performance, and funding reporting systems that make [a project and performance reporting system that makes] available in a central location on the department's website information regarding the:

(1) delivery of individual transportation projects as provided in §16.202 of this subchapter (relating to Reporting System for Delivery of Individual Projects);

(2) operation and condition of the department's statewide transportation system as provided in §16.203 of this subchapter (relating to Performance Reporting on the Operation and Condition of the Statewide Transportation System); and

(3) funding available for the department's statewide transportation system and actual expenditures related to the system as provided in §16.204 of this subchapter (relating to Reporting System for Funding and Expenditures).

(b) Entry of information. Each district will enter information about each of its transportation projects into the project, [and] performance, and funding reporting systems [system].

(c) Department website. The department will make the statistical information provided under this subchapter available on the department's website in more than one downloadable electronic format. The information will be easily accessible, understandable, and in a format that allows a person to conduct electronic searches for information about a specific district, a county, a highway under the jurisdiction of the department, or a type of road under the jurisdiction of the department.

(d) Reports to legislative districts. The department will provide to each member of the legislature a copy of the annual reports required by §16.202 and §16.203 of this subchapter for each department district located within the boundaries of a legislative district, and at the request of a legislator, a senior management employee of the department will meet with the legislator to explain the reports. A copy of each annual district report will also be provided to the political subdivisions located in the district that is the subject of the report, including a:

(1) municipality;

(2) county; and

(3) local transportation entity.

(e) Reports to the legislature. The department will provide a copy of the annual reports required by §16.202 and §16.203 of this subchapter to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues.

§16.202. Reporting System for Delivery of Individual Projects.

(a) Work program [plan]. The department will develop a four year business work program [plan] for tracking the delivery of each transportation project in a district, including grouped rehabilitation and preventive maintenance projects, that is [are] being developed or under construction and identified in the next fiscal year or any of the following three fiscal years of the unified transportation program (UTP) described in §16.105 of this chapter (relating to Unified Transportation Program (UTP)).

(1) Each district will develop a consistently formatted work program [plan] based on the UTP that contains all transportation projects that the district intends to implement during the four year period [next fiscal year and the following three consecutive fiscal years].

(2) For each project the work program [plan] must contain:

(A) the status of the project [an identification of each phase of project development, including planning, route, and environmental impact studies, design, right of way acquisition, utility adjustment, and construction];

(B) each source of funding for the project, the funding category to which the project has been assigned, and the project's priority within the category [the estimated cost of each phase of project development];

(C) an identification of each phase and benchmark of project development, including environmental clearance, right of way acquisition or possession, utility adjustment or coordination, completion of plans, specifications, and estimates, award of construction contract, and completion of construction;

(D) [(C)] a project schedule with estimated timelines for completing each applicable benchmark of the project as the project progresses [phase of the project];

(E) [(D)] a summary of progress on the project that identifies whether the project is being completed on-time and on-budget; and

(F) [(E)] a list of department employees responsible for the project and contact information for each person listed.

(3) For each major transportation project identified in §16.106 of this chapter (relating to Major Transportation Projects) the work program must also contain:

(A) the estimated cost of each phase of project development; and

(B) the progress on each applicable benchmark of the project that identifies whether the project is being completed on-time and on-budget.

(4) [(3)] The department will use the work program [plan] in:

(A) preparing a budget for the district and the department;

(B) monitoring the performance of the district; and

(C) evaluating the performance of district employees.

(5) [~~(4)~~] The department will consolidate the districts' work plans into a statewide work program [~~plan~~] and publish it on the department's website.

(6) [~~(5)~~] The department will update the information contained in the project and performance reporting system for delivery of individual transportation projects under this section at least monthly.

(b) Annual Report. As a component of the project and performance reporting system for delivery of individual transportation projects required by this section, the department will conduct an annual review of the benchmarks and timelines of all transportation projects included in the work program [~~funded under program funding Categories 2, 3, 4, 5, 6, 7, and 12 as described in §16.153 of this chapter (relating to Funding Categories)~~] to determine the completion rates of the projects and whether the projects were completed on-time and on-budget. The review will be used to create an annual report on the level of achievement statewide and by district based on the benchmarks and timelines described in subsection (a)(2) and (3) of this section for each transportation project listed in the work program [~~plan and included in the program funding categories described in this subsection~~]. The report will include:

(1) the status of each project identified as a high priority in accordance with §16.105 of this chapter;

(2) a summary of the number of statewide project implementation benchmarks that have been completed; and

(3) information about the accuracy of previous department financial forecasts.

[~~(c) Legislative districts. The department will make available to each member of the legislature a copy of the annual report required by subsection (b) of this section for each department district located within the boundaries of a legislative district, and at the request of a legislator, a senior management employee of the department will meet with the legislator to explain the report.~~]

[~~(d) Legislature. The department will provide a copy of the annual report required by subsection (b) of this section to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues.~~]

§16.203. Performance Reporting on the Operation and Condition of the Statewide Transportation System.

(a) System performance. The department will develop a set of performance measures for evaluating the effectiveness of its expenditures on the statewide transportation system in achieving the transportation goals identified by the statewide long-range transportation plan under §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(b) Performance measures. At a minimum, the performance measures adopted under subsection (a) of this section will include the:

(1) percentage of transportation construction projects for which the [~~planning, design, and~~] project development phases, including environmental clearance, right of way acquisition or possession, [~~and~~] utility adjustment or coordination, completion of plans, specifications, and estimates, and award of construction contract are completed on or before the planned implementation timelines and on-budget;

(2) percentage of transportation construction projects for which construction is completed on or before the planned implementation timelines and on-budget;

(3) total dollar amount spent for right of way acquisition as a percentage of the original amount estimated for right of way acquisition;

(4) number of vehicle miles traveled;

(5) peak hour travel congestion in the eight largest metropolitan areas;

(6) number of fatalities per 100 million vehicle miles traveled;

(7) percentage of bridges that have a condition rating of good or better;

(8) dollar amounts deposited to the credit of the state highway fund and disbursements from the fund compared to the amounts forecasted to be deposited and disbursed, respectively;

(9) dollar amounts obligated in connection with contracts or participation in contracts with historically underutilized businesses, disadvantaged business enterprises, and small business enterprises as a percentage of the amounts spent on all contracts; and

(10) percentage of lane miles on the state highway system that have a pavement condition rating of good or better.

(c) Additional performance measures. The commission, as it deems appropriate, may adopt performance measures in addition to those listed in subsection (b) of this section.

(d) Reports on effectiveness of expenditures. As a component of the performance reporting system required by this section, the department will include:

(1) reports prepared by the department or an institution of higher education that evaluate the effectiveness of the department's expenditures on transportation projects to achieve the transportation goals identified by the SLRTP;

(2) information about the condition of bridges on the state highway system; and

(3) information about the condition of the pavement for each highway on the state highway system.

(e) [~~(d)~~] Updates. The department will update the information contained in the [~~project and~~] performance reporting system [~~for performance measures~~] under this section at least annually.

(f) [~~(e)~~] Annual Report. As a component of the project and performance reporting system required by this section, the department annually will compile and evaluate the information provided for the performance measures and publish a report describing the results and the effectiveness of meeting each transportation goal that is identified by the statewide long-range transportation plan under §16.54 of this chapter. The department will report on the results and level of achievement statewide and by district.

[~~(f) Legislative districts. The department will make available to each member of the legislature a copy of the annual report required by subsection (e) of this section for each district located within the boundaries of a legislative district, and at the request of a legislator, a senior management employee of the department will meet with the legislator to explain the report.~~]

[~~(g) Legislature. The department will provide a copy of the annual report required by subsection (e) of this section to the lieutenant governor, the speaker of the house of representatives, and the chair of~~

~~the standing committee of each house of the legislature with primary jurisdiction over transportation issues.~~]

§16.204. Reporting System for Funding and Expenditures.

(a) Account information system. The department will develop an account information reporting system for tracking money deposited to the credit of each separate account and subaccount of the state highway fund, including subaccounts for toll projects required under Transportation Code, Chapter 228. The account information will include:

(1) the source for the department's funds whether from the state highway fund, bond proceeds, or revenue from a comprehensive development agreement or a toll project, and amount of the deposited funds;

(2) the amount and general type or purpose of expenditure as described in the comptroller's statewide accounting system; and

(3) the balance credited to each account and subaccount.

(b) Reporting. The department will report on the funding and expenditures as applicable by each:

(1) district;

(2) program funding category as identified in §16.153 of this chapter (relating to Funding Categories); and

(3) source of funds as described in subsection (a)(1) of this section.

(c) [~~(b)~~] Updates. The department will update the account information reporting system at least quarterly.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202156
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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CHAPTER 27. TOLL PROJECTS
SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

43 TAC §27.3, §27.4

The Texas Department of Transportation (department) proposes amendments to §27.3 and §27.4, concerning Comprehensive Development Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

The department's own experience, and that of other agencies, establishes that evaluating developer performance periodically during the term of an agreement and discussing the results with developers is a powerful motivator for developers to maintain high quality performance or improve inadequate performance, and is one of the most important tools available for ensuring good developer performance.

Past performance information is an important tool for use in future evaluations of qualifications and proposals, and in the award of comprehensive development agreements. The use of past performance as an evaluation factor in the contract award process is instrumental in making "best value" selections. It enables the department to better predict the quality of future work.

These amendments provide for the department's periodic evaluation of a developer's performance under a comprehensive development agreement, and of the developer's team members, consultants, and subcontractors. The amendments also provide for the consideration of the results of those evaluations and other evaluations of past performance in the evaluation of qualifications statements submitted in response to a request for qualifications, and proposals submitted in response to a request for proposals. Past performance under other contracts is an important indicator of a proposer's ability to perform the prospective agreement successfully.

Amendments to §27.3 provide that the department will evaluate the performance of a private entity that enters into a comprehensive development agreement, and will evaluate the performance of the private entity's team members, consultants, and subcontractors. Evaluations will be conducted annually at twelve month intervals during the term of the comprehensive development agreement, upon termination of the comprehensive development agreement, and when the department determines that work is behind schedule or not being performed according to the requirements of the comprehensive development agreement. Optional evaluations may be conducted as provided in the comprehensive development agreement.

After a performance evaluation is conducted, the department will provide for review and comment a copy of the performance evaluation report to the entity being evaluated and, if that entity is a consultant or subcontractor, to the entity that entered into the comprehensive development agreement. The department will consider any submitted comments in finalizing the performance evaluation report.

Amendments to §27.4 provide that the department will consider the results of performance evaluations conducted by the department under §27.3 and 43 TAC §9.152 (concerning Design-Build Contracts), the results of other performance evaluations determined by the department to be relevant to the project, and other criteria that the department considers appropriate in the evaluation of qualifications statements submitted in response to a request for qualifications, and in the evaluation of proposals for a comprehensive development agreement.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amendments. The fiscal implications cannot be quantified with certainty as it will depend on the number of comprehensive development agreements entered into by the department and the number of performance evaluations conducted by the department. There will be no fiscal implications for local governments as a result of enforcing or administering the amendments.

Ed Pensock, Director, Strategic Projects Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Pensock has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to improve the process for awarding comprehensive development agreements and to improve the performance of developers and team members, consultants, and subcontractors of developers. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.3 and §27.4 may be submitted to Ed Pensock, Director, Strategic Projects Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2012. In accordance with Transportation Code, §201.810(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, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.209.

§27.3. General Rules for Private Involvement.

(a) Solicited and unsolicited proposals. The rules in this subchapter address the manner by which the department intends to evaluate submissions received from private entities in response to requests for qualifications and proposals issued by the department, as well as unsolicited proposals received by the department.

(b) Reservation of rights. The department reserves all rights available to it by law in administering these rules, including without limitation the right in its sole discretion to:

(1) withdraw a request for qualifications or a request for proposals at any time, and issue a new request;

(2) reject any and all qualifications submittals or proposals, whether solicited or unsolicited, at any time;

(3) terminate evaluation of any and all qualifications submittals or proposals, whether solicited or unsolicited, at any time;

(4) issue a request for qualifications relating to a project described in an unsolicited proposal after the rejection or termination of the evaluation of the proposal and any competing proposals;

(5) suspend, discontinue, or terminate comprehensive development agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;

(6) negotiate with a proposer without being bound by any provision in its proposal, whether solicited or unsolicited;

(7) negotiate with a proposer to include aspects of unsuccessful proposals for that project in the comprehensive development agreement;

(8) request or obtain additional information about any proposal from any source;

(9) modify, issue addenda to, or cancel any request for qualifications or request for proposals;

(10) waive deficiencies in a qualifications submittal or proposal, accept and review a non-conforming qualifications submittal or proposal, or permit clarifications or supplements to a qualifications submittal or proposal;

(11) revise, supplement, or make substitutions for all or any part of these rules; or

(12) retain or return all or any portion of the fees required to be paid by proposers under this subchapter, as provided in subsection (h) of this section.

(c) Costs incurred by proposers. Except as provided in §27.4(f) of this subchapter (relating to Solicited Proposals), under no circumstances will the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise obligated to, reimburse the costs incurred by proposers, whether or not selected for negotiations, in developing solicited or unsolicited proposals or in negotiating agreements.

(d) Department information. Any and all information the department makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind except as may be expressly specified in the request for qualifications or request for proposals. Proposers may not rely upon any oral responses to inquiries.

(e) Procedure for communications. If a proposer has a question or request for clarification regarding these rules or any request for qualifications or request for proposals issued by the department, the proposer shall submit the question or request for clarification in writing to the person responsible for receiving those submissions, as designated in the request for qualifications or request for proposals, and the department will provide the responses in writing. The proposer shall also comply with any other provisions in the request for qualifications or request for proposals regulating communications.

(f) Compliance with rules. In submitting any proposal, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of this subchapter.

(g) Proposer information submitted to department. All qualifications submittals or proposals submitted to the department become the property of the department and may be, except as provided by Transportation Code, §223.204, subject to the Public Information Act, Government Code, Chapter 552. Proposers should familiarize themselves with the provisions of Transportation Code, §223.204 and the Public Information Act. In no event shall the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subchapter. If the department receives a request for public disclosure of all or any portion of a proposal, the department will notify the applicable proposer of the request and inform such proposer that it has an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified in the department's notice and allowed under the Public Information Act. If a proposer has special concerns about information it desires to make available to the department,

but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, the proposer should specifically and conspicuously designate that information as such in its proposal. The proposer's designation shall not be dispositive of the trade secret, proprietary, or exempted nature of the information so designated.

(h) Proposal review fee. A nonnegotiable proposal review fee shall be required for any unsolicited proposal submitted under this subchapter and applied by the department to offset the cost of processing and reviewing the proposal. An unsolicited proposal for a project in the department's unified transportation program must be accompanied by a proposal review fee of $5,000. An unsolicited proposal for a project that is not in the department's unified transportation program must be accompanied by a proposal review fee of $10,000. The executive director may approve a proposal review fee for a particular project in a lower amount. In approving a lower fee, the executive director shall consider the complexity of the project. Failure to submit the required proposal review fee shall bar the department's consideration of the applicable proposal. All fees shall be submitted in the form of a cashier's check made payable to the department. A proposal review fee that is submitted with a proposal for a project that is not an eligible project, or that the department is not otherwise legally authorized to accept shall be returned to the proposer. All other proposal review fees are nonrefundable.

(i) Sufficiency of proposal. All proposals, whether solicited or unsolicited, should be as thorough and detailed as possible so that the department may properly evaluate the potential feasibility of the proposed project as well as the capabilities of the proposer and its team members to provide the proposed services and complete the proposed project.

(j) Project studies. Studies that the department deems necessary as to route designation, civil engineering, traffic and revenue, environmental compliance, and any other matters will be assigned, conducted, and paid for as negotiated between the department and the successful proposer and set forth in the comprehensive development agreement or in any separate contract for consultant services. Unless otherwise provided in the request for proposals, the department will favor proposals in which the costs for studies will be advanced by the private entity, particularly if the advance is at the private entity's risk. The department may elect to pay, in whole or in part, the costs for such studies in its sole discretion. The department may require that the financial plan for each proposal provide for reimbursement of all related expenses incurred by the department, as well as any department study funds utilized in connection with the project.

(k) Proposer's additional responsibilities. The department, in its sole discretion, may authorize the successful proposer to seek licensing, permitting, approvals, and participation required from other governmental entities and private parties, subject to such oversight and review by the department as specified in the comprehensive development agreement or in any separate contract for consultant services.

(l) Proposer's work on environmental review of eligible project. The department may solicit proposals or accept unsolicited proposals in which the proposer is responsible for providing assistance in the environmental review and clearance of an eligible project, including the preparation of environmental impact assessments and analyses and the provision of technical assistance and technical studies to the department or its environmental consultant relating to the environmental review and clearance of the proposed project. The environmental review and the documentation of that review shall at all times be conducted as directed by the department and subject to the oversight of the department, and shall comply with all requirements of state and federal law, applicable federal regulations, and the National Environmental Policy Act (42 U.S.C. §4321 et seq.), if applicable, including but not limited to the study of alternatives to the proposed project and any proposed alignments, procedural requirements, and the completion of any and all environmental documents required to be completed by the department and any federal agency acting as a lead agency. The department:

(1) shall determine the scope of work to be performed by the private entity or its consultants or subcontractors;

(2) shall specify the level of design, alternatives to be reviewed, impacts to consider, and other information to be provided by the private entity or its consultants or subcontractors; and

(3) shall independently review any studies and conclusions reached by the private entity or its consultants or subcontractors before their inclusion in an environmental document.

(m) Effect of environmental requirements on comprehensive development agreement. Completion of the environmental review is required before the private entity may be authorized to conduct and complete the final design and start construction of a project. Additionally, all applicable state and federal environmental permits and approvals must be obtained before the private entity may start construction of the portion of a project requiring the permit or approval. Unless and until that occurs, the department is not bound to any further development of the project. The department, and any federal agency acting as a lead agency, may select an alternative other than the one in the proposed project, including the "no-build" alternative. A comprehensive development agreement shall provide that the agreement will be modified as necessary to address requirements in the final environmental documents, and shall provide that the agreement may be terminated if the "no-build" alternative is selected or if another alternative is selected that is incompatible with the requirements of the agreement.

(n) Public meetings and hearings. All public meetings or hearings required to be held pursuant to applicable law or regulation will be directed and overseen by the department, with participation by such other parties as it deems appropriate.

(o) Additional matters. Any matter not specifically addressed in this subchapter which pertains to the acquisition, design, development, financing, construction, reconstruction, extension, expansion, maintenance, or operation of an eligible project pursuant to this subchapter, shall be deemed to be within the primary purview of the commission, and all decisions pertaining thereto, whether or not addressed in this subchapter, shall be as determined by the commission, subject to the provisions of applicable law.

(p) Performance and payment security. The department shall require a private entity entering into a comprehensive development agreement to provide a performance and payment bond or an alternative form of security in an amount that, in the department's sole determination, is sufficient to ensure the proper performance of the agreement, and to protect the department and payment bond beneficiaries supplying labor or materials to the private entity or a subcontractor of the private entity. Bonds and alternate forms of security shall be in the form and contain the provisions required in the request for proposals or the comprehensive development agreement, with such changes or modifications as the department determines to be in the best interest of the state. In addition to, or in lieu of, performance and payment bonds, the department may require:

(1) a cashier's check drawn on a federally insured financial institution, and drawn to the order of the department;

(2) United States bonds or notes, accompanied by a duly executed power of attorney and agreement authorizing the collection or sale of the bonds or notes in the event of the default of the private

entity or a subcontractor of the private entity, or such other act or event that, under the terms of the comprehensive development agreement, would allow the department to draw upon or access such security;

(3) an irrevocable letter of credit issued or confirmed by a financial institution to the benefit of the department, meeting the credit rating and other requirements prescribed by the department, and providing coverage for a period of at least one year following final acceptance of the project and completion of any warranty period;

(4) an irrevocable letter signed by a guarantor meeting the net worth or other financial requirements prescribed in the request for proposals or comprehensive development agreement, and which guarantees, to the extent required under the request for proposals or comprehensive development agreement, the full and prompt payment and performance when due of the private entity's obligations under the comprehensive development agreement and other documents and agreements executed by the private entity in connection with the comprehensive development agreement; or

(5) any other form of security deemed suitable by the department.

(q) Performance evaluations. The department will evaluate the performance of a private entity that enters into a comprehensive development agreement, and will evaluate the performance of the private entity's team members, consultants, and subcontractors. Evaluations will be conducted annually at twelve month intervals during the term of the comprehensive development agreement, upon termination of the comprehensive development agreement, and when the department determines that work is behind schedule or not being performed according to the requirements of the comprehensive development agreement. Optional evaluations may be conducted as provided in the comprehensive development agreement. After a performance evaluation is conducted, the department will provide for review and comment a copy of the performance evaluation report to the entity being evaluated and, if that entity is a consultant or subcontractor, to the entity that entered into the comprehensive development agreement. The department will consider any submitted comments in finalizing the performance evaluation report. The results of performance evaluations may be used in the evaluation of qualifications submittals and proposals under §27.4 of this subchapter and §9.153 of this title (relating to Solicitation of Proposals) by proposers that include the team members, consultants, and subcontractors evaluated.

§27.4. Solicited Proposals.

(a) Applicability. If the department develops a concept for private participation in an eligible project, it will solicit participation in accordance with the requirements of this section.

(b) Request for qualifications - notice. If authorized by the commission to issue a request for qualifications for an eligible project, the department will set forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information as the department considers relevant or necessary in the request for qualifications and will publish it at a minimum in the *Texas Register* and in one or more newspapers of general circulation in this state. The department may also elect to furnish the request for qualifications to businesses in the private sector that the department otherwise believes might be interested and qualified to participate in the project which is the subject of the request for qualifications.

(c) Request for qualifications - content. At its sole option, the department may elect to furnish conceptual designs, fundamental details, technical studies and reports or detailed plans of the proposed project in the request for qualifications. The request for qualifications may request one or more conceptual approaches to bring the project to fruition.

(d) Request for qualifications - evaluation. The department, after evaluating the qualification submittals received in response to a request for qualifications, will identify and approve a "short-list" that is composed of those entities that are considered most qualified to submit detailed proposals for a proposed project. In evaluating the qualification submittals, the department will consider the results of performance evaluations conducted by the department under §27.3 of this subchapter (relating to General Rules for Private Involvement) and §9.152 of this title (relating to General Rules for Design-Build Contracts), the results of other performance evaluations determined by the department to be relevant to the project, and other criteria [~~such~~ ~~qualities~~] that the department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The request for qualifications will include the criteria used to evaluate the qualification submittals and the relative weight given to the criteria. The department shall advise each entity providing a qualification submittal whether it is on the short-list of qualified entities.

(e) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all private entities qualified for the short-list, consisting of the submission of detailed documentation regarding the project. The request for proposals may require the submission of additional information relating to:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the proposer's ability to meet schedules;

(5) a detailed financial plan, including costing methodology, cost proposals, and project financing approach; or

(6) any other information the department considers relevant or necessary.

(f) Requests for proposals - payment for work product. The request for proposals may stipulate an amount of money, as authorized under Transportation Code, §223.203(m), that the department will pay to an unsuccessful proposer that submits a detailed proposal that is responsive to the requirements of the request for proposals. The commission shall approve the amount of the payment to be stipulated in the request for proposals. In determining whether to approve a payment, the commission shall consider:

(1) the effect of a payment on the department's ability to attract meaningful proposals and to generate competition;

(2) the work product expected to be included in the proposal and the anticipated value of that work product; and

(3) the costs anticipated to be incurred by a private entity in preparing a proposal.

(g) Joint proposal by private entity and environmental consultant. If the department solicits proposals in which an entity affiliated with the proposing private entity will act as the department's environmental consultant for an eligible project, the request for proposals may require the submission of a consolidated joint proposal from the private entity and the environmental consultant or subcontractor that results in a comprehensive development agreement and separate contract for environmental services.

(h) Detailed proposal evaluation criteria. The proposals will be evaluated by the department based on the results of performance evaluations conducted by the department under §27.3 of this subchapter and §9.152 of this title, the results of other performance evaluations determined by the department to be relevant to the project, and other [~~those~~] evaluation criteria the department deems appropriate for the project, which may include the reasonableness of any financial plan submitted by a proposer, the reasonableness of the project schedule, reasonableness of assumptions (including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project), forecasts, financial exposure and benefit to the department, compatibility with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with department policies, guidelines and standards, as may be deemed appropriate by the department to maximize the overall performance of the project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals.

(i) Apparent best value proposal. Based on the evaluation and the evaluation criteria described under subsection (h) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this subchapter, and may select the private entity whose proposal offers the apparent best value to the department. If the request for proposals provides for a consolidated joint proposal to be submitted for a separate environmental consultant contract as well as the comprehensive development agreement, the request for proposals shall specify how the two parts of the proposal will be evaluated in making the overall best value determination.

(j) Selection of entity. The department shall submit a recommendation to the commission regarding approval of the proposal determined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the comprehensive development agreement to the apparent best value proposer. Award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the comprehensive development agreement, and satisfaction of such other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(k) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate a comprehensive development agreement with the apparent best value proposer to design, develop, construct, finance, reconstruct, extend, expand, maintain, or operate the project and (if included in the request for proposals) an environmental consultant contract. If a comprehensive development agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the overall best value, the department will formally end negotiations with that proposer and, in its sole discretion, either:

(1) reject all proposals;

(2) modify the request for proposals and begin again the submission of proposals; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate a comprehensive development agreement with that entity in accordance with this paragraph.

(l) Negotiations with environmental consultant. If an environmental consultant contract satisfactory to the department cannot be negotiated with the selected consultant, the department may elect to terminate negotiations and proceed with the negotiation of the comprehensive development agreement only.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202157
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

SUBCHAPTER H. DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS

43 TAC §27.92

The Texas Department of Transportation (department) proposes amendments to §27.92, concerning Determination of Terms for Certain Toll Projects.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §228.013, which was added by Senate Bill 1420, 82nd Legislature, Regular Session, 2011, requires, for certain department toll projects in which a private entity has a financial interest in the project's performance, that the distribution of the project's financial risk, the method of financing for the project, and the tolling structure and methodology be determined by a committee comprised of representatives from the department, any local toll project entity for the area in which the project is located, the applicable metropolitan planning organization, and each municipality or county that provides revenue or right of way for the project. Section 27.92(b), relating to Financial Terms, provides the requirements for the formation and membership of the committee. Under the current rules, there is no restriction on whom an entity with appointment powers may appoint as the entity's representative on the committee. If an entity appoints a consultant to serve on the committee as the entity's representative, the consultant's membership presents a potential conflict of interest, or the appearance of a conflict of interest, because it presents a situation in which the consultant may have a significant financial or personal interest, or the consultant's firm may have a significant financial interest, in the results of a determination made by the committee that could affect the consultant's decision on a matter before the committee. The resulting potential or apparent conflict of interest could put the integrity of the process in question.

The amendments to §27.92(b) resolve the issue by requiring a committee member to be an elected official or a full-time employee of the entity that appoints the member. This change prohibits the service of a consultant on the committee which eliminates the potential or apparent conflict of interest. Removing the potential conflict helps preserve the integrity of the process

for making financial decisions about the affected department toll projects and promotes fairness and enhances confidence in the process.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be the preservation of the integrity of the process for making financial decisions about certain department toll projects. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.92 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2012. In accordance with Transportation Code, §201.810(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, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.209 and §228.013.

§27.92. Financial Terms.

(a) Applicability. This subchapter applies only to a department toll project that will be developed under a concession agreement or an availability payment contract, and for which:

(1) funds allocated to a metropolitan planning organization are expected to be used to pay for project costs;

(2) local funds are expected to be used to pay for project costs; or

(3) property of a city or county is expected to be used as project right of way or a city or county is expected to pay for the acquisition of right of way for the project.

(b) Formation and membership of committee. For a project subject to Transportation Code, Chapter 373, Subchapter B, the committee shall be formed after the department exercises its option under that subchapter to develop, finance, construct, and operate the project. The membership of a committee shall be determined after the commission authorizes the department to initiate a procurement for a toll project that provides for the potential delivery of the project through a concession agreement or an availability payment contract. To be eligible to serve as a committee member, a person must be an elected official or a full-time employee of the represented entity. A committee consists of the following members:

(1) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed project may be located;

(2) one member appointed by each local toll project entity within whose boundaries all or part of the proposed project may be located;

(3) one member appointed by each city and county which has:

(A) provided local funds to pay for right of way acquisition or other project costs or to acquire right of way for the project, or has provided property of the city or county for use as project right of way; or

(B) submitted to the department an order or resolution adopted by the city council or county commissioners court committing local funds or property to the project; and

(4) one member appointed by the executive director to represent the department.

(c) Officers. The committee will, subject to the concurrence of the commission, elect a chair and vice-chair by majority vote of the members of the committee.

(d) Duties. A committee established under this subchapter shall submit a report to the executive director before the date the department issues a request for qualifications for the toll project, except for a project for which the department and a local toll project entity have agreed on the terms and conditions for the project under Transportation Code, §228.0111, or for which a local toll project entity has waived its option to develop, construct, and operate the project, in which case the report shall be submitted before the date the department issues a request for proposals for the project. If the project is subject to a market valuation agreement, market valuation waiver agreement, or similar agreement entered into under Transportation Code, §228.0111, or a toll project agreement entered into under Transportation Code, §373.006, the report may not include determinations that are inconsistent with the provisions of the agreement that relate to the determinations to be included in the report. A report shall contain the following determinations:

(1) the distribution of project financial risk, which is the allocation of revenue risk for a toll project between the department and the private entity with which the department enters into an agreement for the project;

(2) the method of financing for the project, which is a determination of whether the project should be funded with private or public funding or a combination of private and public funding; and

(3) unless the project is subject to a regional tolling policy, the project's tolling structure and methodology.

(e) Failure to submit report. All members of a committee will utilize their best efforts to support the generation of a report. If a committee does not submit a report by the date the department is scheduled to issue a request for qualifications or request for proposals, as applica-

ble, for a project, the department will use any business terms applicable to the project that have been adopted by the metropolitan planning organization and that relate to the determinations to be included in the report.

(f) Meetings.

(1) Meeting requirements. The department's Office of General Counsel will submit to the Office of the Secretary of State notice of a meeting of the committee at least eight days before the date of the meeting. The notice will provide the date, time, place, and purpose of the meeting. A meeting of a committee will be open to the public. A committee will follow the agenda set for each meeting under paragraph (2) of this subsection.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (g) of this section. Any committee member may suggest an agenda item, provided that the agenda item must be approved by the chair of the committee and the department. A committee's report may only discuss items that are within the committee's jurisdiction. The office designated under subsection (g) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone, or any combination of the three, at least eight calendar days before each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Committee action. A quorum of the committee is one half or more of the number of members appointed to the committee. A committee may act only by majority vote of the members present at the meeting and voting.

(4) Record. Minutes of all committee meetings shall be prepared and filed with the executive director. The complete proceedings of all committee meetings must also be recorded by electronic means.

(5) Public information. All minutes, transcripts, and other records of the committees are records of the department and as such, are subject to disclosure under the provisions of Government Code, Chapter 552.

(g) Administrative support. For each committee, the executive director will designate an office or division of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee. The department will provide project information and other information to the committee to assist the committee in carrying out its duties, including the project procurement schedule.

(h) Duration. After a committee submits the report described in subsection (d) of this section, the committee ceases to exist. The department may, in its discretion, reconvene a committee if changed circumstances may result in a change in the committee's determinations.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202158
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Transportation (department) proposes the repeal of §§28.80 - 28.82, 28.90 - 28.92, and 28.100 - 28.102 and simultaneously proposes new Subchapter A, General Provisions, §§28.1 - 28.3; new Subchapter B, Highway Crossings by Oversize and Overweight Vehicles and Loads, §§28.10 - 28.12; new Subchapter C, Port of Brownsville Permits, §§28.20 - 28.22; and new Subchapter D, Chambers County Permits, §§28.30 - 28.32, all concerning Oversize and Overweight Vehicles and Loads.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

In accordance with statutory changes made by the 82nd Legislature, Regular Session, 2011, the department transferred to the Texas Department of Motor Vehicles (DMV) a majority of the oversize and overweight permitting responsibilities on January 1, 2012. Accordingly, 43 TAC Chapter 28, Subchapters A - E and I - K were transferred to the DMV and became 43 TAC Chapter 219. The rules that did not transfer are Subchapter F, Highway Crossings by Oversize and Overweight Vehicles and Loads, Subchapter G, Port of Brownsville Port Authority Permits, and Subchapter H, Chambers County Permits. This proposal reorganizes Chapter 28 by repealing those subchapters and adding a new Subchapter A, which contains general provisions, and new Subchapters B, C, and D, which contain the substance of current Subchapters F - H.

New §28.1, Purpose and Scope, explains the purpose of the oversize and overweight rules that remain with the department. This section identifies the oversize and overweight programs that are administered by the department and provides the statutory authority for these programs.

New §28.2, Definitions, contains the definitions from former §28.2, which was transferred to the rules of the DMV, that are now necessary for the terms used in the new subchapters. No new definitions are added, however, many definitions that were in the former section have been omitted because they are not used in reorganized Chapter 28.

New §28.3, Delegation Authority, authorizes the executive director to delegate the powers and duties provided under Chapter 28 to a department employee who is not below the level of division director. This authority was provided in the definition of "director" in the transferred rules. In the new sections the term "executive director" is used instead of "director" and the definition is deleted as unnecessary.

New Subchapter B, Highway Crossings by Oversize and Overweight Vehicles and Loads (§§28.10 - 28.12), replaces current Subchapter F, Highway Crossings by Oversize and Overweight Vehicles and Loads, with no substantive changes. The only changes are that the sections have been renumbered to fit the new structure of the chapter.

New Subchapter C, Port of Brownsville Permits (§§28.20 - 28.22), replaces current Subchapter G, Port of Brownsville Port Authority Permits, with two substantive changes. In §28.21 a new subsection (a) is added relating to the authority to issue permits in order to be consistent with new §28.31 regarding the authority of Chambers County to issue permits. Subsection (a) expressly provides that the commission has granted the Port

of Brownsville the authority necessary to issue oversize and overweight permits for operation within the port facility. This additional language does not affect the current agreement with the Port of Brownsville.

The second change is in new §28.22. Subsection (d) clarifies that the DMV is the agency that issues general oversize and overweight permits. This change is needed because of the statutory transfer of general permitting responsibilities.

New Subchapter D, Chambers County Permits (§§28.30 - 28.32), replaces current Subchapter H, Chambers County Permits, with changes in new §28.32 to make the subchapter consistent with new Subchapter C, Port of Brownsville Permits. In subsection (a) the term "permit contents" is changed to "permit application." In subsection (b), the term "permit use and validity" is changed to "permit issuance." Finally, subsection (d) clarifies that the DMV is the agency that issues general oversize and overweight permits and is necessary because of the statutory transfer of general permitting responsibilities. These minor changes make the language consistent between these two optional permitting programs.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the repeals and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals and new sections.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new sections will be clear division of responsibilities between the department and the Texas Department of Motor Vehicles. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §§28.80 - 28.82, 28.90 - 28.92, and 28.100 - 28.102 and new §§28.1 - 28.3, 28.10 - 28.12, 28.20 - 28.22, and 28.30 - 28.32 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2012. In accordance with Transportation Code, §201.810(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 repeals and new sections, or is an employee of the department.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§28.1 - 28.3

STATUTORY AUTHORITY

The new sections 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, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.1. Purpose and Scope.

The department participates in the regulation of the movement of oversize and overweight vehicles and loads on the state highway system, in order to insure the safety of the traveling public, and to protect the integrity of the highways and the bridges. The department's responsibilities are accomplished through the authorization of the issuance of permits for the movement of oversize and overweight vehicles and loads by certain authorities, and the execution of special contracts for the movement of oversize and overweight vehicles and loads to travel across the width of a state highway. The sections under this chapter prescribe the policies and procedures for authorizing the issuance of permits and the execution of contracts.

§28.2. Definitions.

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

(1) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(2) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(3) Commission--The Texas Transportation Commission.

(4) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.

(5) Department--The Texas Department of Transportation.

(6) Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(7) Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(8) Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(9) Overweight--An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

(10) Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(11) Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit or temporary vehicle registration by the MCD.

(12) Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(13) State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(14) State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(15) Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the department for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(16) Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(17) Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(18) Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(19) Vehicle--Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

§28.3. Delegation Authority.

The executive director may delegate to a department employee in a position that is not below the level of division director any power or duty assigned to the executive director by this chapter.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202159
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER B. HIGHWAY CROSSINGS BY OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

43 TAC §§28.10 - 28.12

STATUTORY AUTHORITY

The new sections 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, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.10. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter C, a person, firm, or corporation may request authorization to operate a vehicle that does not comply with one or more of the restrictions of Transportation Code, Chapter 621, across the width of any road in the state highway system, other than a controlled-access highway as defined in Transportation Code, §223.001, from private property to other private property provided that the commission has contracted with the requester to indemnify the department for the cost of repair and maintenance to the portion of such highway crossed by such vehicles.

§28.11. Surety Bond.

The requester shall, prior to exercising any rights thereunder, execute an adequate surety bond in such amount as may be determined by the commission to compensate for the cost of maintenance and repairs as provided herein, approved by the state treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the requester fulfilling the obligations of the contract.

§28.12. Preparation of Contract.

(a) The department will contract with the requester to indemnify the state for the cost of maintenance or repair to that portion of the highway crossed by vehicles which cannot comply with one or more restrictions of Transportation Code, Chapter 621.

(b) The department will, at the expense of the requester, periodically maintain and repair the vehicle crossing in accordance with established departmental regulations, specifications, and engineering standards and practices.

(c) If the proposed vehicle crossing requires initial upgrading or reconstruction to safely and adequately accommodate the vehicles which will be using the highway crossing, the requester will bear the entire cost of such work. Construction plans, specifications, traffic control plans, and any other related work will be provided by the requester at no cost to the state. At the sole option of the department, it may elect to do this work or provide for this work by separate contract, with the requester bearing the entire cost.

(d) The requester will be responsible for furnishing, installing, maintaining, and removing when no longer required all traffic control devices which are required at the crossing to insure the safety of the traveling public. At the sole option of the department, it may elect to do this work or provide for this work by separate contract, with the requester bearing the entire cost. All traffic-control devices and flaggers, if required, shall be in accordance with the Texas Manual on Uniform Traffic Control Devices.

(e) The requester shall indemnify the department for the cost of maintenance and repair to the vehicle crossing. The requester shall,

at the entire expense of the requester, provide and keep in force a surety bond in an amount determined by the state to cover the cost of such maintenance and repair. The bond will require approval by the attorney general and comptroller of public accounts.

(f) The requester shall keep the roadway free of debris and objectionable dust, lights, or noise.

(g) The requester shall provide the department with the department's certificate of insurance covering the latest insurance requirements for contractors doing state highway construction work.

(h) The responsibilities of the requester as set forth in the contract shall not be transferred, assigned, or conveyed to a third party without approval of the department.

(i) If, in the sole judgment of the department, it is determined at a future date that traffic conditions have so changed that the existence or use of the vehicle crossing is impeding maintenance, damaging the highway facility, impairing safety, or that the vehicle crossing is not being properly operated, or that it constitutes a nuisance, or if for any other reason it is in the department's judgment that such a facility is not in the public interest, the vehicle crossing shall be modified if corrective measures acceptable to both the department and the requester can be applied to eliminate the objectionable features of the facility or terminated and the use of the area as a vehicle crossing discontinued.

(j) Upon termination of the contract the department shall make an inspection of the crossing site. If additional repairs, modifications, or rehabilitation is required to return the highway to its original condition, the requester shall bear the entire expense of such work.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202160
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER C. PORT OF BROWNSVILLE PERMITS

43 TAC §§28.20 - 28.22

STATUTORY AUTHORITY

The new sections 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, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.20. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the department may authorize the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to issue permits for the movement of oversize or overweight vehicles carrying cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and any location along that highway within the Port of Brownsville, or on U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and any location along that highway within the Port of Brownsville. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by the Port of Brownsville for the movement of oversize and overweight vehicles.

§28.21. Responsibilities.

(a) Authority to issue permits. The Port of Brownsville may issue a permit for travel on the roads designated by Transportation Code, §623.219(a) by a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C but does not exceed loaded dimensions of 12 feet wide, 16 feet high, or 110 feet long, or 125,000 pounds gross weight.

(b) Surety bond. The department may require the Port of Brownsville to post a surety bond in the amount of $500,000 for the purpose of reimbursing the department for actual maintenance costs of State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83 in the event that sufficient revenue is not collected from permits issued under this subchapter.

(c) Verification of permits. All permits issued by the Port of Brownsville shall be carried in the permitted vehicle. The Port of Brownsville shall provide access for verification of permit authenticity by law enforcement and department personnel.

(d) Training. The Port of Brownsville shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by the Port of Brownsville.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter which the Port of Brownsville must comply with for the purpose of revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or upon direction by the executive director of all Port of Brownsville permit issuance activities. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets and monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the Port of Brownsville is not complying with this subchapter, the executive director will issue a notice to the Port of Brownsville allowing 30 days to correct any non-compliance issue. If after 30 days it is determined that the Port of Brownsville is not in compliance, then the executive director may revoke the Port of Brownsville's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, the Port of Brownsville may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, the Port of Brownsville's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(3) Upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter, all permit fees collected by the port, less allowable administrative costs, shall be paid to the department.

(h) Fees. Fees collected under this subchapter shall be used solely to provide funds for the payments provided for under Transportation Code, §623.213, less administrative costs.

(1) The permit fee shall not exceed $80 per trip. The Port of Brownsville may retain up to 15 percent of such permit fees for administrative costs, and the balance of the permit fees shall be deposited in the state highway fund to be used for maintenance of State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83.

(2) The Port of Brownsville may issue a permit and collect a fee for a permit issued under this subchapter for any vehicle or vehicle combination exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapters B and C, originating at:

(A) the Gateway International Bridge traveling only on State Highway 48/State Highway 4 to any location along that highway within the Port of Brownsville;

(B) a location within the Port of Brownsville traveling on State Highway 48/State Highway 4 to the Gateway International Bridge;

(C) the Veterans International Bridge at Los Tomates, traveling on U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 to any location along that highway within Port of Brownsville; or

(D) a location within the Port of Brownsville, traveling on State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83 to the Veterans International Bridge at Los Tomates.

(i) Maintenance Contract. The Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of the portions of State Highway 4, State Highway 48, and U.S. Highway 77/U.S. Highway 83 for which a permit may be issued under this subchapter.

(1) Maintenance shall include, but is not limited to, routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service.

(2) The Port of Brownsville may make direct restitution to the department for actual maintenance costs in lieu of the department filing against the surety bond described in subsection (a) of this section, in the event that sufficient revenue is not collected.

(j) Reporting. Port of Brownsville shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

§28.22. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the director of the Port of Brownsville;

(4) a statement of the kind of cargo being transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12 feet wide, 15 feet 6 inches high, 110 feet long or 125,000 pounds gross weight;

(7) a statement of any condition on which the permit is issued;

(8) a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and any location along that highway within the Port of Brownsville, or using U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and any location along that highway within the Port of Brownsville;

(9) the location where the cargo was loaded; and

(10) the date or dates on which movement authorized by the permit is allowed.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. The Port of Brownsville may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle - 25,000 pounds;

(B) two-axle group - 46,000 pounds;

(C) three-axle group - 60,000 pounds;

(D) four-axle group - 70,000 pounds;

(E) five-axle group - 81,400 pounds; or

(F) trunnion axles - 60,000 pounds if;

(i) the trunnion configuration has two axles;

(ii) there are a total of 16 tires for a trunnion configuration; and

(iii) the trunnion axle as shown in the following diagram is 10 feet in width.

Figure: 43 TAC §28.22(c)(3)(F)(iii)

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the Texas Department of Motor Vehicles for an oversize or overweight permit in accordance Transportation Code, Chapter 623.

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours; however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by the Port of Brownsville must be weighed on scales capable of determining gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(2) A valid permit and certified weight ticket must be presented to the gate authorities before the permitted vehicle shall be allowed to exit or enter the port.

(3) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. The Port of Brownsville shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(4) Permits issued by the Port of Brownsville shall be in a form prescribed by the department.

(5) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202161
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER D. CHAMBERS COUNTY PERMITS

43 TAC §§28.30 - 28.32

STATUTORY AUTHORITY

The new sections 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, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.30. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter M, the commission may authorize Chambers County, Texas to issue permits for the movement of oversize and overweight vehicles and loads on the roads designated by Transportation Code, §623.252(b)(1). This subchapter sets forth the requirements and applicable procedures for the issuance of permits by Chambers County for the movement of oversize and overweight vehicles.

§28.31. Responsibilities.

(a) Authority to issue permits. Chambers County may issue a permit for a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C but does not exceed loaded dimensions of 12 feet wide, 16 feet high, or 110 feet long, or 100,000 pounds gross weight for travel on the roads designated by Transportation Code, §623.252(b)(1).

(b) Permit fees and administrative costs. Chambers County shall collect a fee for each permit issued under this subchapter. The permit fee may not exceed $80 per trip. Chambers County may retain an amount up to 15 percent of each permit fee to cover costs of administering the program. The permit fee and administration costs shall be established by the agreement between the department and Chambers County. Chambers County shall deposit the permit fees collected, less administrative cost amounts authorized, in the State Highway Fund. The department will use those amounts for the maintenance and improvement of the roads designated by Transportation Code, §623.252(b)(1).

(c) Surety bond. The department may require Chambers County to post a surety bond in the amount of $500,000 for the purpose of reimbursing the department the amount equal to the actual maintenance costs of roads designated by Transportation Code, §623.252(b)(1) less the amount that Chambers County deposits in the State Highway Fund under subsection (b) of this section.

(d) Verification of permits. All permits issued by Chambers County shall be carried in the permitted vehicle. Chambers County shall provide access for verification of permit authenticity by law enforcement and department personnel.

(e) Training. Chambers County shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by Chambers County.

(f) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter. Chambers County shall comply with those accounting procedures for the purpose of revenue collections and any payment made to the department under subsection (i) of this section.

(g) Audits. The department may conduct annual audits of all Chambers County permit activities or upon direction by the executive director. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets, and monitoring of personnel issuing permits under this subchapter.

(h) Revocation of authority to issue permits. If the department determines as a result of an audit that Chambers County is not complying with this subchapter, the executive director will issue a notice to Chambers County allowing 30 days to correct any non-compliance issue. If after 30 days it is determined that Chambers County is not in compliance, then the executive director may revoke Chambers County's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, Chambers County may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, Chambers County's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(3) Upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter, all permit fees collected by Chambers County, less allowable administrative costs, shall be paid to the department.

(i) Maintenance payments. If Chambers County does not deposit in the State Highway Fund under subsection (b) of this section sufficient amounts to reimburse the department for the payment of the costs of maintenance of the highways that are designated by Transportation Code, §623.252(b)(1), Chambers County may pay the deficiency in lieu of the department's filing against the surety bond provided under subsection (c) of this section for that amount. Maintenance includes routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service.

(j) Reporting. Chambers County shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and fees collected. The report must be in a format approved by the department.

§28.32. Permit Issuance Requirements and Procedures.

(a) Permit application. A permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the designated agent of Chambers County;

(4) the maximum weight and dimensions of the proposed vehicle combination including the number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(5) a statement of the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12 feet wide, 16 feet high, or 110 feet long, or 100,000 pounds gross weight;

(6) a statement of any condition on which the permit is issued;

(7) a statement that the cargo may be transported in Chambers County only over the roads that are described by Transportation Code, §623.652(b)(1);

(8) the location where the cargo was loaded; and

(9) the date or dates on which movement authorized by the permit is allowed.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. Chambers County may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group, to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount;

(A) single axle - 25,000 pounds;

(B) two-axle group - 46,000 pounds;

(C) three-axle group - 60,000 pounds;

(D) four-axle group - 70,000 pounds;

(E) five-axle group - 81,400 pounds;

(F) trunnion axles - 60,000 pounds if:

(i) the trunnion configuration has two axles;

(ii) there are a total of 16 tires for a trunnion configuration; and

(iii) the trunnion axle as shown in the following diagram is 10 feet in width.

Figure: 43 TAC §28.32(c)(3)(F)(iii)

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the Texas Department of Motor Vehicles for an oversize or

overweight permit in accordance with Transportation Code, Chapter 623.

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours; however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by Chambers County must be weighed on scales capable of determining permitted loaded gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture.

(2) A copy of the certified weight ticket shall be retained by Chambers County and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(3) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued.

(4) Permits issued by Chambers County shall be in a form prescribed by the department.

(5) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

(i) Records. Chambers County shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(j) Issuing entity. A motor carrier transporting loads that fall within the size and weight limits of §28.31 of this subchapter (relating to Responsibilities) on trips originating and terminating within the Cedar Crossing Business Park using a road designated by Transportation Code, §623.252(b)(1) must obtain a permit from Chambers County.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202162
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER F. HIGHWAY CROSSINGS BY OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

43 TAC §§28.80 - 28.82

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.80. Purpose.
§28.81. Surety Bond.
§28.82. Preparation of Contract.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202163
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER G. PORT OF BROWNSVILLE PORT AUTHORITY PERMITS

43 TAC §§28.90 - 28.92

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.90. Purpose.

§28.91. Responsibilities.

§28.92. Permit Issuance Requirements and Procedures.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202164
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER H. CHAMBERS COUNTY PERMITS

43 TAC §§28.100 - 28.102

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.051, which provides the commission with the authority to establish rules for the issuance of crossing agreements; Transportation Code, §623.212, which allows the commission to authorize the Port of Brownsville to issue permits for the movement of oversize or overweight vehicles; and Transportation Code, §623.259, which provides the commission with the authority to establish rules for issuance of Chambers County Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.051, and Transportation Code, Chapter 623, Subchapters K and M.

§28.100. Purpose.

§28.101. Responsibilities.

§28.102. Permit Issuance Requirements and Procedures.

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

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202165
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: June 10, 2012
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING FINANCIAL EXIGENCY

19 TAC §109.2001

The Texas Education Agency withdraws the emergency new §109.2001 which appeared in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8283).

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202195
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 17, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 475-1497

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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 2. TEXAS ETHICS COMMISSION

CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

The Texas Ethics Commission (the commission) adopts amendments to §24.1 and §24.15 and the repeal of §§24.7, 24.11, 24.13, 24.14, and 24.19, relating to restrictions on contributions and expenditures applicable to corporations and labor organizations. The amendment §24.15 is adopted with changes and will be republished. The amendment to §24.1 and the repeal of §§24.7, 24.11, 24.13, 24.14, and 24.19 are adopted without changes to the proposed text as published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1439).

Section 253.091 of the Election Code identifies certain entities as corporations if they are organized under certain laws or if they fall within a list of associations that are identified by statute. In 2003, the laws governing for-profit and non-profit corporations were recodified into the Texas Business Organizations Code, under the Texas For-Profit Corporation Law and the Texas Nonprofit Corporation Law, respectively. The recodification became effective on January 1, 2006.

Section 24.1 has historically duplicated the various provisions in Title 15 of the Election Code that identify the entities that are considered corporations. On February 2, 2007, the commission amended §24.1 to clarify that the term "corporation" includes any corporation organized under the new Texas Business Organizations Code. The legislature amended Title 15, effective on September 1, 2007, so that corporations covered by its restrictions explicitly included those entities formed under the new areas of law in the Texas Business Organizations Code. The adopted amendment to §24.1 reflects the statutory amendments.

The adopted amendment to §24.15 references the statute (§253.041 of the Election Code) on which the rule is based instead of a rule (§32.23(b), which is a typo and should be §22.23).

Section 24.7 is similar to §253.096 of the Election Code and does not provide any additional guidance beyond the statute. Therefore, it may be repealed as unnecessary.

Section 24.11 paraphrases §253.098 of the Election Code and does not provide any additional guidance beyond the statute. Therefore, it may be repealed as unnecessary.

Section 24.13(a) was adopted to track §253.100 of the Election Code, which permits corporations and labor organizations to make political expenditures to establish and administer a general-purpose committee. Section 253.100(a) now includes lists of permissible and impermissible expenditures by corporations and labor organizations. The remaining subsections in §24.13 only repeat provisions in §253.100 and §253.102 of the Election Code. Therefore, the rule may be repealed as unnecessary.

Section 24.14 states that an expenditure by a corporation to deliver a political contribution is an administrative expenditure for purposes of §253.100 of the Election Code. Section 253.100(a)(12) now specifies that administrative expenses include expenses incurred in preparing and delivering committee contributions. Therefore, the rule may be repealed as unnecessary.

Section 24.19 is similar to §253.104 of the Election Code and does not provide any additional guidance beyond the statute. Therefore, it may be repealed as unnecessary.

No comments were received regarding the proposed rules during the comment period.

1 TAC §24.1, §24.15

The amendments §24.1 and §24.15 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§24.15. Payments to a Corporation of the Candidate or Officeholder.

(a) If a corporation charges a candidate, officeholder, or specific-purpose committee for supporting or assisting a candidate or officeholder less than fair market value for goods or services in order to comply with §253.041(b) of the Election Code, the discount is not a prohibited corporate contribution.

(b) If the discount is greater than is necessary to comply with §253.041(b) of the Election Code, the discount is a prohibited corporate contribution if the discount is not otherwise authorized by this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2012.

TRD-201202136
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: May 15, 2012
Proposal publication date: March 2, 2012
For further information, please call: (512) 463-5800

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1 TAC §§24.7, 24.11, 24.13, 24.14, 24.19

The repeal of §§24.7, 24.11, 24.13, 24.14, and 24.19 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2012.

TRD-201202137
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: May 15, 2012
Proposal publication date: March 2, 2012
For further information, please call: (512) 463-5800

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING FINANCIAL EXIGENCY

19 TAC §109.2001

The Texas Education Agency (TEA) adopts new §109.2001, concerning financial exigency. The new section is adopted with changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8317). The new rule implements the requirements of the Texas Education Code (TEC), §44.011, as added by Senate Bill (SB) 8, 82nd Texas Legislature, First Called Session, 2011. The TEC, §44.011, requires that the commissioner of education adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district. In addition, the TEC, §44.011, authorizes the commissioner to take such action in the manner provided by law for emergency rules.

At the same time the proposed new permanent rule, §109.2001 was adopted on an emergency basis effective November 21, 2011, and published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8283). The TEA renewed the effectiveness of the emergency adoption of new §109.2001 for an additional 60 days. The renewal was published in the March 23, 2012, issue of the *Texas Register* (37 TexReg 1971). The emergency effectiveness of §109.2001 expires upon the effective date of the adoption of the new permanent rule.

Previously there were no rules or regulations as to when a school district may declare financial exigency for the school district. New TEC, §44.011, allows the board of trustees of a school district to adopt a resolution declaring financial exigency for the school district. Each time the board adopts a resolution under this section, the board must notify the commissioner of education.

Adopted new 19 TAC Chapter 109, Subchapter BB, §109.2001, defines financial exigency and establishes in rule procedures for consistent implementation of the statutorily required written notification. In accordance with the TEC, §44.011, adopted new 19 TAC §109.2001 sets minimum standards concerning school district financial conditions that must exist for declaration of financial exigency by the board of trustees of the school district. Also in accordance with statute, the adopted new rule prescribes the time and manner in which notice must be given to the commissioner of education.

In conjunction with the addition of minimum standards concerning the declaration of financial exigency, School Financial Integrity Rating System of Texas (FIRST) rules in 19 TAC Chapter 109, Subchapter AA, will be amended in 2012 for the fiscal year 2011-2012 data for financial accountability ratings to be published in summer 2013. A school district declaring financial exigency will not be able to obtain the highest School FIRST rating of Superior Achievement.

In response to public comments, the following changes were made to 19 TAC §109.2001 since the rule was published as proposed.

In subsection (a), the phrase "existing academic programs" was changed to "the district's instructional programs" to clarify that a school district may also take into consideration new programs when determining the district's financial resources.

In subsection (b)(3), the phrase "over one year" was added to define the time period involved.

The criterion described in subsection (b)(4) was broadened to include events other than unforeseen natural disasters.

Subsection (b)(5) was modified to allow for a combination of the conditions listed in the subsection in order to provide flexibility.

Subsection (d) was modified to clarify that an extension of a declaration of financial exigency is subject to the same criteria specified in subsection (b).

In addition, the following technical changes were made at adoption.

Subsection (b)(5) was modified to better phrase the original intent, clarifying that the 15% benchmark applies to all conditions listed in subsection (b)(5).

Subsection (d) was modified to require that the specified notice be signed by both the board president and the school district superintendent for shared responsibility and accountability. The subsection was also modified to remove reference to a specific agency division, as the division responsible for handling notices of exigency declarations may change.

The adopted new section requires school districts to provide notice to the commissioner when the district declares financial exigency. The notice must be provided within 20 calendar days of adoption by a school district's board of trustees. School districts are required to maintain documentation supporting the declaration of financial exigency.

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

The public comment period on the proposal began December 9, 2011, and ended January 9, 2012. Following is a summary of public comments received and the corresponding agency re-

sponse regarding proposed new 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter BB, Commissioner's Rules Concerning Financial Exigency, §109.2001, Financial Exigency.

§109.2001(a)

Comment: The Texas Association of School Boards (TASB) commented that the language in 19 TAC §109.2001(a) does not specify that it is the responsibility of a local school board to make the determination of a district's financial position. The TASB also commented that "the wording of Subsection (a) could be construed to limit not only a school district's ability to cut positions in a reduction of force, but also to cut salaries." The TASB noted that Senate Bill 8, 82nd Texas Legislature, First Called Session, "created new flexibilities for reducing personnel, which are now found in Texas Education Code (TEC) §§21.4021-[21].4032." The TASB further commented that although these new processes do not require a declaration of financial exigency, subsection (a) could appear to imply that a school district exercising the abilities described under the TEC, §§21.4021-21.4032, must use the financial exigency process. The TASB also noted that subsection (a) "indicates that financial resources must be insufficient to support existing programs, without accounting for new programs, even when new programs would be mandated by law."

Agency Response: The agency agrees in part and disagrees in part. The agency agrees that the definition for exigency, as stated in the proposed rule, did not specifically encompass any new programs that a school district may have. The agency has modified subsection (a) to replace "existing academic programs" with "the district's instructional programs." The agency disagrees that subsection (a) would limit a school district's ability to cut positions in a reduction of force or to cut salaries. The TEC, §44.011(e), requires the commissioner of education to set minimum standards for school district financial conditions that must exist for declaration of financial exigency by the board of trustees of the school district. Unilateral and individual school district definitions of financial exigency are no longer allowable when declaring exigency. Additionally, as noted by the TASB, financial exigency is not required for action authorized under the TEC, §§21.4021-21.4032.

Comment: The Texas American Federation of Teachers (Texas AFT) commented that 19 TAC §109.2001(a) could result in confusion by "suggesting there are two alternative definitions of financial exigency, one based on insufficiency of resources to support existing academic programs, the other based on inability to finance full staff compensation." The Texas AFT provided an alternate suggested definition of "financial exigency" for use in the rule that referenced only inability to finance full staff compensation.

Agency Response: The agency disagrees with the suggested change to the definition of "financial exigency." The suggested definition is too narrow and does not reflect the intent of the legislation that created the authorizing statute.

§109.2001(b)

Comment: The Texas Association of School Administrators (TASA) recommended that the rule's criteria for declaration of financial exigency be made "less prescriptive and more flexible." The TASA further commented that while the rule includes a provision that allows the commissioner to approve other circumstances not listed in 19 TAC §109.2001(b)(1)-(5), "there is no guarantee of approval and no deadline for the commissioner to render a decision."

Agency Response: The agency disagrees that the minimum standards are overly prescriptive. If a school district identifies any other circumstance not listed under subsection (b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner. In addition, the commissioner of education is aware of the need for timely review and approval of requests made for any other circumstances as allowed under subsection (b)(6).

§109.2001(b)(1)

Comment: A business official from Fredericksburg Independent School District (ISD) commented that while the district has no plans to declare financial exigency under 19 TAC §109.2001(b)(1), the official and her colleagues feel that "taking away" the option for a school district to meet the conditions described under subsection (b)(1) without declaring financial exigency is a very bad idea and limits the flexibility of school districts.

Agency Response: The agency provides the following clarification. A school district is not required to declare financial exigency if it meets any of the minimum standards in subsection (b). Including the condition under subsection (b)(1) as a minimum standard for declaration of financial exigency does not inhibit a school district from projecting and planning.

Comment: The TASB commented that its primary concern about the standard set in 19 TAC §109.2001(b)(1) is that "by focusing exclusively on the percentage of reduction in fund balance, the rule does not reflect long-standing TEA guidance establishing a target for healthy school district fund balances. For a district already at a healthy target, reductions less than 20 percent may signal significant fiscal distress. On the other hand, a district with a balance well above the target may actually reduce by 20 percent in order to achieve greater financial health."

Agency Response: The agency disagrees. The new rule does not require a school district to declare financial exigency. Reductions in fund balance that exceed the 20% calculations do not automatically trigger any requirement that financial exigency be declared regardless of the fund balance. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner of education.

Comment: The Texas AFT commented that the percentage thresholds specified in proposed 19 TAC §109.2001(b)(1)-(5) should not be lowered in response to public comments and that, "if anything, the commissioner should consider raising these percentage thresholds."

Agency Response: The agency agrees in part and disagrees in part. While the rule does state five specific conditions with thresholds under which a school district may declare financial exigency, a sixth condition without a specified threshold is also available. A school district may seek approval from the commissioner of education in order to declare exigency under this sixth condition. If a school district identifies any other circumstance not listed under subsection (b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the

opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner of education.

§109.2001(b)(2)

Comment: The TASB commented that 19 TAC §109.2001(b)(2) "adopts a new, and potentially arbitrary, standard of a 10% enrollment decline within a five-year period." The TASB proposed that the subsection "be modified to (a) give latitude and flexibility to the local boards to determine the impact of a decline in students, or (b) follow current law. As such, a reasonable justification behind a declaration of financial exigency might read: A current or projected decline in enrollment that results or will result in a significant decrease in district revenue." Or, alternatively: "A current or projected decline in ADA that is the result of the closing or reduction in personnel of a military base or a current or projected decline in ADA where the district has or will have 98% or less of the prior year's ADA."

Agency Response: The agency disagrees. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a district is given the opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner of education.

§109.2001(b)(3)

Comment: The TASB commented that 19 TAC §109.2001(b)(3) "sets a high and potentially arbitrary benchmark for financial exigency based on loss of general funds per WADA [weighted average daily attendance]." The TASB stated, "A local school board grappling with a sudden loss of funds, even at rates below 10%, will have to make serious adjustments to its operating budget, including potentially the reduction of personnel positions."

The TASB proposed the following changes to the subsection: "The 'lookback' period should be defined as 'the prior two years.' The percentage benchmark should be changed from ten percent . . . to eight percent, which would capture some portion of school districts subject to deeper cuts next year and which no longer will have federal jobs funds to lessen the impact. Finally the projected reduction should be set to four percent, which is one-half of the reduction of looking back two years because the time period has been changed from two years to one year."

The TASB proposed that the subsection's language be changed to read, "A reduction of more than 8% in total General Fund total funding per student in weighted average daily attendance over the past two years or a projected reduction of 4% compared to the current year."

Agency Response: The agency disagrees. The agency has maintained the subsection as proposed for the 10% reduction criterion having determined it was an appropriate measure of financial exigency. The agency, however, has clarified the subsection to define the "lookback" period as one year instead of the two years suggested by the TASB. Subsection (b)(3) has been revised to read, "a reduction of more than 10% in total General Fund total funding per student in weighted average daily attendance over one year or a projected reduction of 10% compared to the current year."

§109.2001(b)(4)

Comment: The TASB commented that specifying "natural" disasters in 19 TAC §109.2001(b)(4) excludes man-made disasters and that the use of the word "unforeseen" is problematic as certain types of disasters such as hurricanes occur regularly and so could be judged to be foreseeable.

The TASB proposed the subsection be changed to read, "Any disaster requiring significant expenditures for repair or remediation."

Agency Response: The agency agrees that specifying "natural" disaster is too limiting and has expanded the criteria in subsection (b)(4) to read, "a natural disaster or casualty loss defined as damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual and that requires expenditures for repair or remediation in excess of 15% of the current year General Fund budget."

§109.2001(b)(5)

Comment: In commenting on 19 TAC §109.2001(b)(5), the TASB stated that litigation expenses and tax refunds should not be grouped with repair costs as "unanticipated" major expenses and that the subsection should be split into two separate subsections for this reason.

The TASB also commented that "the 15 percent benchmark for tax refunds sets a higher bar for circumstances that impact the expenditure side of a school budget than for those that impact the revenue side as is found in the standard set in subsection (b)(3)." The TASB proposed that the benchmark for tax refunds be dropped to 4 percent to align with the percentage it had proposed for use in 19 TAC §109.2001(b)(3).

Agency Response: The agency disagrees. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner of education. To provide flexibility, however, the agency has modified subsection (b)(5) to allow a combination of the conditions listed in subsection (b)(5). In addition, to better phrase the original intent, the subsection was modified to clarify that the 15% benchmark applies to all conditions listed in subsection (b)(5).

§109.2001(b)(6)

Comment: In addressing 19 TAC §109.2001(b)(6), the TASB commented that determination of whether financial exigency is present should remain largely a local matter, as it has been in the past. The TASB stated that "the proper role for the commissioner in determining whether or not a financial exigency occurs outside of the minimum standards is to make such determinations, after a board has already made its own determination. In assessing their own financial conditions, school districts should be able to rely on previous written decisions from the commissioner on grievances regarding reductions in force."

The TASB proposed that subsection (b)(6) be changed to read, "Any other circumstances approved by the school district's board of trustees based on the current or projected financial condition of the school district."

Agency Response: The agency disagrees. The TEC, §44.011(e), requires the commissioner of education to set minimum standards for school district financial conditions that must exist for declaration of financial exigency by the board of trustees of the school district. If a proposed declaration does not meet the minimum standards as defined under 19 TAC §109.2001(b)(1)-(5), then the opportunity exists for a school

district to describe another specific condition under subsection (b)(6).

Comment: The Texas AFT commented that 19 TAC §109.2001(b)(6) "sets no boundaries for the commissioner's own exercise of discretion to approve a declaration of financial exigency" and that "the five more specific provisions already provide broad enough latitude, particularly considering the inclusion of 'unanticipated major expense' as a sufficient basis for financial exigency." The Texas AFT asked that subsection (b)(6) be deleted for these reasons.

Agency Response: The agency disagrees and has maintained the subsection as proposed, allowing a school district to provide its written plea for consideration to declare exigency for financial relief. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under subsection (b)(6) to present it for consideration by the commissioner of education.

Comment: The Texas State Teachers Association (TSTA) commented that the standard described in 19 TAC §109.2001(b)(6) is too broad and should be deleted, stating that "there can be no exceptions to the minimum standards required by statute."

Agency Response: The agency disagrees and has maintained the subsection as proposed, allowing a school district to provide its written plea for consideration to declare exigency for financial relief. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under subsection (b)(6) to present it for consideration by the commissioner of education.

§109.2001(c) and (d)

Comment: The TASB commented that 19 TAC §109.2001(c) and (d) of the proposed rule are satisfactory and track the statutory requirements.

Agency Response: The agency agrees. As a technical edit, subsection (d) was modified at adoption to require that the specified notice be signed by both the board president and the school district superintendent for shared responsibility and accountability.

Comment: The Texas AFT commented that 19 TAC §109.2001(c) and (d) should be revised to clarify that an extension of a declaration of financial exigency is subject to the same criteria laid out in subsection (b) for an initial declaration.

Agency Response: The agency agrees and has modified subsection (d) to clarify that the conditions set forth in subsection (b) also apply to an extension of a declaration of financial exigency. Additionally, as a technical edit, subsection (d) was modified at adoption to require that the specified notice be signed by both the board president and the school district superintendent for shared responsibility and accountability.

Comment: The Texas AFT commented that 19 TAC §109.2001(d) should be amended to require the agency to certify the existence of the conditions asserted in the board resolution.

Agency Response: The agency disagrees. This type of provision would exceed the authority provided by the authorizing statute.

§109.2001 in General

Comment: The TSTA commented in favor of the rule's establishing criteria for declaration of financial exigency, stating that the rule's language "provides the kind of accountability that the Legislature clearly intended."

Agency Response: The agency agrees.

Comment: The Texas Classroom Teachers Association (TCTA) expressed support for the proposed rule and commented that the rule "strikes an appropriate balance for districts that have unanticipated and urgent need to reduce staff while maintaining the incentive for districts to make staffing decisions on a predictable basis during the nonrenewal season in the spring." The TCTA also commented that the planned changes to the Financial Integrity Rating System of Texas (FIRST) rules, which will prevent a district declaring financial exigency from obtaining the highest rating of Superior Achievement, "will help ensure that the declaration of financial exigency is a tool used judiciously."

Agency Response: The agency agrees.

Comment: The superintendent of Cypress-Fairbanks ISD commented that "each locally elected Board of Trustees should have discretion in determining when a financial exigency declaration is the best course of action." The superintendent also expressed support for the recommendation of the Texas School Alliance (TSA) related to modifying the rule language and encouraged the commissioner to create a committee of district representatives from across the state to provide the commissioner with feedback before adopting a final rule.

Agency Response: The agency disagrees. The TEC, §44.011(e), requires the commissioner of education to set minimum standards for school district financial conditions that must exist for declaration of financial exigency by the board of trustees of the school district. If a school district identifies any other circumstance not listed under 19 TAC §109.2001(b)(1)-(5) that it considers a reason for declaration of financial exigency, a school district is given the opportunity under 19 TAC §109.2001(b)(6) to present it for consideration by the commissioner of education. The agency also notes that the comments submitted by the TSA were received by the agency after the public comment period ended and, therefore, were not included in this summary document.

The new section is adopted under the TEC, §44.011, as added by Senate Bill 8, 82nd Texas Legislature, 2011, which authorizes the commissioner to adopt by rule minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

The new section implements the TEC, §44.011.

§109.2001. Financial Exigency.

(a) Financial exigency means the financial position of a school district as a whole is such that the financial resources of the school district are insufficient to support the district's instructional programs or the school district is unable to finance the full compensation of staff for the current or succeeding fiscal year.

(b) Financial exigency may be declared by a school district board of trustees under one or more of the following conditions:

(1) a decrease of more than 20% in unassigned General Fund balance per student in weighted average daily attendance over the past two years or a projected reduction of 20% compared to the current year;

(2) a decline in enrollment by more than 10% over the past 5 years;

(3) a reduction of more than 10% in total General Fund total funding per student in weighted average daily attendance over one year or a projected reduction of 10% compared to the current year;

(4) a natural disaster or casualty loss defined as damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual and that requires expenditures for repair or remediation in excess of 15% of the current year General Fund budget;

(5) any of the following, or combination of the following, that exceeds 15% of the current year General Fund budget: an unanticipated major expense, including significant repair costs; litigation expenses, excluding lawsuits against the state; or tax refunds; or

(6) any other circumstances approved in writing by the commissioner of education.

(c) The declaration of financial exigency expires at the end of the fiscal year during which the declaration is made unless the school district board of trustees adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(d) Each time the school district board of trustees adopts a resolution or an extension declaring financial exigency, the board must notify the commissioner within 20 calendar days of the adoption. The notice must include the date the resolution was adopted and the reason(s) for the declaration of financial exigency as specified in subsection (b) of this section. The notice must be signed by the board president and superintendent and submitted to the Texas Education Agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202194
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 17, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.3

The Texas Medical Board (Board) adopts an amendment to §171.3, concerning Physician-in-Training Permits, without changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1639) and will not be republished.

The amendment provides that physician-in-training permit holders may do internal moonlighting under limited conditions.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on January 18, 2012. The comments were incorporated into the proposed rules.

The Board received comments regarding §171.3 from several individuals.

COMMENT NO. 1

Three individuals who are licensed physicians commented that they support the rule and that the rule will benefit Physician-in-Training permit holders by giving them more clinical experience before obtaining full licensure.

COMMENT NO. 2

An individual commented that the proposed definition of "internal moonlighting" is not consistent with how many academic medical centers define the term, and such moonlighting requires full licensure.

The Board disagrees with this comment. A stakeholder meeting was held, at which representatives of several academic medical centers were present who expressed that the proposed definition was consistent with how it is defined by the Accreditation Counsel for Graduate Medical Education. Further, the adopted rule provides that internal moonlighting only occur in the same specialty as the training program or approved by the program director as a training area related to the specialty, thereby providing sufficient safeguards to ensure permit holders are not practicing outside of their scope of knowledge.

COMMENT NO. 3

An individual commented that the rule will encourage permit holders to focus on moonlighting, rather than their training.

The Board disagrees with this comment. Under the rule, all internal moonlighting must be approved by the residency programs and permit holders may not do moonlighting that exceeds the work hour limits set by residency training accrediting bodies.

For these reasons, the Board does not believe that any changes should be made to the proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2012.

TRD-201202131
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 15, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 305-7016

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CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.1, §192.2

The Texas Medical Board (Board) adopts amendments to §192.1, concerning Definitions and §192.2, concerning Provision of Anesthesia Services in Outpatient Settings, with non-substantive changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1643). The text of the rules will be republished.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the rule review of Chapter 192.

The amendment to §192.1, relating to Definitions, adds the definition for the American Safety and Heath Institute (ASHI), clarifies Basic Life Support (BLS), and clarifies the definition of Level II services to be dosage greater than one dose of Level 1 or tumescent anesthesia.

The amendment to §192.2, amends language to recognize ASHI as an approved BLS and Advanced Cardiac Life Support (ACLS) certifier, and deletes language that required TMB to review and approve certification courses.

The Board sought stakeholder input through Stakeholder+ Groups, which made comments on the suggested changes to the rules at a meeting held on July 13, 2011. The comments were incorporated into the proposed rules.

The Board received comments regarding §192.1 from the Texas Society of Anesthesiologist (TSA). TSA made comments based on the chapter going through rule review, as opposed to direct comments on the proposed amendments. Comments included amending definitions of anesthesia and anesthesia services; replacing references to dangerous drugs to narcotic drugs; adding definition of tumescent anesthesia; and including rules to regulate the administration of local anesthesia when given in concentrations exceeding 7mg/kg. The Board agreed with the comments from TSA and intends to further amend §192.1 based on those comments at its meetings in June and August of 2012.

The Board received comments regarding §192.2 from TSA. TSA made comments based on the chapter going through rule review, as opposed to direct comments on the proposed amendments. Comments included amendment requirements for level I-III services to better ensure patient safety. The Board agreed with the comments from TSA and intends to further amend §192.2 based on those comments at its meetings in June and August of 2012.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§192.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents indicate otherwise.

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) ASHI--American Safety and Health Institute.

(5) Analgesics--Dangerous or scheduled drugs that alleviate pain.

(6) Anesthesia--The loss of feeling or sensation resulting from the use of dangerous or scheduled drugs to depress nerve function. Anesthetics are scheduled or dangerous drugs used to induce anesthesia.

(7) Anesthesia Services--The use of dangerous and scheduled drugs, including anesthetics, analgesics, and anxiolytics, for the performance of Level II - IV services.

(8) Anxiolytics--Dangerous or scheduled drugs used to treat episodes of anxiety.

(9) Anesthesiologist assistant--A graduate of an approved anesthesiologist assistant training program.

(10) Anesthesiology resident--A physician who is presently in an approved Texas anesthesiology residency program who is either licensed as a physician in Texas or holds a postgraduate resident permit issued by the Texas Medical Board.

(11) BLS--Basic Life Support, as defined by the AHA.

(12) Certified registered nurse anesthetist--A person licensed by the Texas Board of Nursing (TBN) as a registered professional nurse, authorized by the TBN as an advanced practice nurse in the role of nurse anesthetist, and certified by a national certifying body recognized by the TBN.

(13) Dangerous drugs--Medications defined by the Texas Dangerous Drug Act, Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription, but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."

(14) Level I services--Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory.

(15) Level II services--The administration of tumescent anesthesia or the delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician.

(16) Level III services--Delivery of analgesics or anxiolytics other than by mouth, including intravenously, intramuscularly, or rectally.

(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care.

(18) Monitored anesthesia care--Situations where a patient undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(19) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of all of the following listed in subparagraphs (A) - (D) of this paragraph:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting accredited by either the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers, the American Association for the Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(20) Board--The Texas Medical Board.

(21) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(22) Physician--A person licensed by the Texas Medical Board as a medical doctor or doctor of osteopathic medicine who diagnoses, treats, or offers to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or effects cures thereof and charges therefor, directly or indirectly, money or other compensation. "Physician" and "surgeon" shall be construed as synonymous.

(23) Scheduled Drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk.)

§192.2. Provision of Anesthesia Services in Outpatient Settings.

(a) The purpose of these rules is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(b) The rules promulgated under this title do not apply to physicians who practice in the following settings listed in paragraphs (1) - (8) of this subsection:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) any setting physically located outside the State of Texas;

(3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(4) a licensed ambulatory surgical center;

(5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(6) a facility maintained or operated by a state or governmental entity;

(7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(8) an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services that are administered within two hours before an outpatient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(B) the following age-appropriate equipment must be present:

(i) bag mask valve;

(ii) oxygen;

(iii) AED or other defibrillator; and

(iv) epinephrine, atropine, adreno-corticoids, and antihistamines.

(2) Level II services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS; and

(ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:

(i) bag mask valve and appropriate airway maintenance devices;

(ii) oxygen;

(iii) AED or other defibrillator;

(iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(v) IV equipment;

(vi) pulse oximeter; and

(vii) EKG Monitor.

(3) Level III services:

(A) at least two personnel must be present, including the physician who must be currently certified by AHA or ASHI, at a minimum, in ACLS or PALS, as appropriate;

(i) another person must be currently certified by AHA or ASHI, at a minimum, in BLS;

(ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and

(B) the same equipment required for Level II.

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following listed in subparagraphs (A) - (H) of this paragraph:

(A) Basic Standards for Preanesthesia Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Postanesthesia Care;

(D) Position on Monitored Anesthesia Care;

(E) The ASA Physical Status Classification System;

(F) Guidelines for Nonoperating Room Anesthetizing Locations;

(G) Guidelines for Ambulatory Anesthesia and Surgery; and

(H) Guidelines for Office-Based Anesthesia.

(d) A physician delegating the provision of anesthesia or anesthesia-related services to a certified registered nurse anesthetist shall be in compliance with ASA standards and guidelines when the certified registered nurse anesthetist provides a service specified in the ASA standards and guidelines to be provided by an anesthesiologist.

(e) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(f) The anesthesiologist or physician providing anesthesia or anesthesia-related services in an outpatient setting shall perform a preanesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per current ASA standards. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may perform those services within the scope of practice of the CRNA. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained per indications and assessment findings. Pre-anesthetic diagnostic testing and specialist consultation should be obtained as indicated by the pre-anesthetic evaluation by the anesthesiologist or suggested by the nurse anesthetist's pre-anesthetic assessment as reviewed by the surgeon. If responsibility for a patient's care is to be shared with other physicians or non-physician anesthesia providers, this arrangement should be explained to the patient.

(g) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current ASA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current ASA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored. There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. A two-way communication source not dependent on electrical current shall be available. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(h) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for seven years or for a period of time as determined by the board.

(i) Each location must have emergency supplies immediately available. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be

maintained for seven years or for a period of time as determined by the board.

(j) The operating surgeon shall verify that the appropriate policies or procedures are in place. Policies, procedure, or protocols shall be evaluated and reviewed at least annually. Agreements with local emergency medical service (EMS) shall be in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agreements shall be evaluated and re-signed at least annually. Policies, procedure, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to the following listed in paragraphs (1) - (2) of this subsection:

(1) Management of outpatient anesthesia. At a minimum, these must address:

(A) patient selection criteria;

(B) patients/providers with latex allergy;

(C) pediatric drug dosage calculations, where applicable;

(D) ACLS (advanced cardiac life support) or PALS (pediatric advanced life support) algorithms;

(E) infection control;

(F) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(G) discharge criteria.

(2) Management of emergencies. At a minimum, these must include, but not be limited to:

(A) cardiopulmonary emergencies;

(B) fire;

(C) bomb threat;

(D) chemical spill; and

(E) natural disasters.

(k) All equipment and anesthesia-related services must remain available at the office-based anesthesia site until the patient is discharged.

(l) Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under these rules resulted in an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours, or a patient's death intraoperatively or within the immediate postoperative period. Immediate postoperative period is defined as 72 hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2012.

TRD-201202132
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 15, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 305-7016

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CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §195.2

The Texas Medical Board (Board) adopts amendments to §195.2, concerning Certification of Pain Management Clinics, with non-substantive changes to the proposed text as published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1645). The text of the rule will be republished.

The amendment removes the rehearing process for those applicants who are denied pain management clinic certification by the Board; requires that applicants for a pain management clinic certification be able to demonstrate that they are engaged in the active practice of medicine as defined by Board rule §163.11; and that ownership of a pain management clinic is the practice of medicine.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on February 29, 2012. The comments were incorporated into the proposed rules.

The Board received public written and oral comments at the public hearing held on April 13, 2012, regarding §195.2. The board received comments from the Texas Pain Society, the Texas Society of Anesthesiologists and Texas Association of Nurse Anesthetists (TANA).

COMMENT NO. 1

Texas Pain Society and Texas Society of Anesthesiologists commented that they support the proposed amendments without further change.

COMMENT NO. 2

TANA commented that providing that ownership of a clinic is the practice of medicine is an attempt to limit ownership of pain clinics to physicians only and is in conflict with §168.002 of the Medical Practice Act that exempts clinics owned or operated by an advanced practice nurses who use other forms of treatment with the issuance of a prescription for a majority of the patients.

The Board disagrees with this comment. The amendment is not intended to undermine any of the exemptions listed under §168.002 and the Board will continue to recognize those exemptions. For this reason, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, with non-substantive changes.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§195.2. Certification of Pain Management Clinics.

(a) Application for Certification.

(1) Certification requirement. Effective September 1, 2010, a pain management clinic may not operate in Texas without obtaining a certificate from the board. A physician who owns or operates a pain management clinic shall submit an application on a form prescribed by the board. If a clinic has more than one physician

owner, then only the medical director must file an application with the board. Certificates issued pursuant to this subsection are not transferable or assignable. If there is more than one physician owner of the clinic, only the primary physician owner shall be required to register with the board.

(2) Determination of Eligibility by the Executive Director. The executive director shall review applications for certification and may determine whether an applicant is eligible for certification or refer an application to a committee of the board for review. If an applicant is determined to be ineligible for a certificate by the executive director pursuant to §§167.001 - 167.202 of the Act or this chapter, the applicant may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(3) Ineligibility Determination.

(A) If the board, upon recommendation by a committee of the board, determines that an applicant is ineligible for certification, the applicant shall be notified of the board's determination and given the option of appealing the determination to State Office of Administrative Hearings (SOAH). An applicant has 20 days from the date the applicant receives notice of the committee's determination to appeal to SOAH.

(B) If the applicant timely requests a SOAH hearing, the applicant must file a petition with SOAH appealing the determination and shall comply with all other provisions relating to formal proceedings as set out in Chapter 187, Subchapter C of this title (relating to Formal Board Proceedings at SOAH). If an applicant subsequently withdraws the appeal, the matter shall be referred to the full board to render a final determination on the application.

(C) If the applicant does not timely request an appeal to SOAH, the board's determination shall be shall become administratively final at the next scheduled board meeting.

(D) A determination of ineligibility by the board shall be in writing and made available to the public.

(4) Withdrawal. Applicants for certificates may withdraw their applications at any time, unless:

(A) the executive director has made a determination of ineligibility;

(B) the executive director has referred an application to a committee of the board for a determination of eligibility and the committee has determined that the applicant is not exempt from the requirements of §195.4 of this title (relating to Operation of Pain Management Clinics) or is ineligible for a certificate; or

(C) the applicant is under investigation by the board for inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(5) Temporary Suspension of Certificate. A temporary suspension hearing for a clinic shall be held pursuant to the procedures of Chapter 187, Subchapter F of this title (relating to Temporary Suspension Proceedings). Evidence of continuing threat to public health and welfare shall include evidence that a clinic is in violation of this chapter regarding eligibility or operation or that the clinic's staff is dispensing, administering, or prescribing medications in a nontherapeutic manner.

(6) Confidentiality of Records. All records in the possession of or received or gathered by the board relating to an application for or investigation of a pain clinic shall be considered confidential under §164.007 of the Texas Occupations Code and not subject to release under the Public Information Act, Chapter 552 of the Texas Government Code.

(7) Expiration. An application that has been filed with the board in excess of one year will be considered expired. Any further request for certification will require submission of a new application. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for licensure and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events.

(b) Eligibility for Certification.

(1) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(A) have been denied, by any jurisdiction, a license issued by the Drug Enforcement Agency or a state public safety agency under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(B) have held a license issued by the Drug Enforcement Agency or a state public safety agency in any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(C) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(2) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(A) an offense that constitutes a felony; or

(B) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Texas Occupations Code §551.003(11).

(3) As a requirement for eligibility, a physician applying for a pain management certificate must meet the active practice of medicine definition as defined under §163.11 of this title (relating to Active Practice of Medicine).

(c) Expiration of Certificate.

(1) Certificates shall be valid for two years.

(2) Certificate holders shall have a 180-day grace period from the expiration date to renew the certificate, however, the owner or operator of the clinic may not continue to operate the clinic while the permit is expired.

(d) Certificate Renewal.

(1) Certificates must be timely renewed. If a certificate is not renewed before the expiration of the grace period, the certificate

will be automatically cancelled and the owner or operator of the clinic must reapply for original certification.

(2) A certificate may not be cancelled for nonrenewal or by request, while a clinic is under investigation with the board.

(e) The board shall coordinate the certification required under this section with the registration required under the Medical Practice Act, Texas Occupations Code, Chapter 156, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

(f) Ownership of a pain management clinic is the practice of medicine.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 25, 2012.

TRD-201202133
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Executive Director
Texas Medical Board
Effective date: May 15, 2012
Proposal publication date: March 9, 2012
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.11

The Texas Funeral Service Commission (commission) adopts an amendment to §201.11, concerning Disciplinary Guidelines, with changes to the proposed text published in the January 6, 2012, issue of the *Texas Register* (37 TexReg 42) and will be republished.

The amendment is adopted in accordance with House Bill 1468 adding Texas Health and Safety Code, Chapter 695 to ensure the commission the authority to administer administrative actions and/or penalties.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§201.11. Disciplinary Guidelines.

When the commission finds that a licensee has violated Occupations Code Chapter 651; Health and Safety Code Chapter 695, §§711.003, 711.008, 711.010, 711.011, 711.021 - 711.035, 711.038, 711.041, 711.042, 711.061, 711.062, Chapter 716 or any of the commission's rules, it shall:

(1) before a SOAH hearing, issue Preliminary finding of facts and conclusions of law, in addition to imposing appropriate penalties ranging from a letter of warning to monetary administrative penalties of not less $100 but not more than $5,000 for each violation in accordance with Texas Occupation Code §651.552.

(2) The following guidelines will be utilized in the setting of administrative penalties.

(A) Texas Occupation Code §651.451, Certain Fraudulent and Deceptive Acts.

(i) Presentation to the Commission of any license, certificate or diploma that was illegally or fraudulently obtained, or when fraud or deception was used in passing an examination. The impersonation of, or acting as a proxy for, another in any examination required by this Act for a funeral director and/or embalmer, (1) and (2)--$1,000 - $5,000;

(ii) The purchase, sale, barter, or use, or any offer to purchase, sale, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Commission for license to practice as a funeral director and/or embalmer, (3)--$1,000 - $5,000;

(iii) Altering, with fraudulent intent, any funeral director and/or embalmer license certificate, or transcript of license or certificate, (4)--$1,000 - $5,000;

(iv) The use of any funeral director and/or embalmer license, certificate, diploma or transcript of any such funeral director and/or embalmer license, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered, (5)--$1,000 - $5,000;

(v) The impersonation of a licensed funeral director or embalmer as authorized by the Act, or permitting or allowing another to use a person's license or certificate to practice as a funeral director or embalmer in this state, (6) and (7)--$1,000 - $5,000;

(vi) Presentation of false certificate of work done as a provisional licensee (8)--$100 - $2,000.

(vii) Failure to comply with the demand for a report of implementation will result in the assessment of a $100.00 administrative penalty against the license(s) involved.

(B) Texas Occupation Code §651.452, Lack of Fitness to Practice.

(i) Conviction of a misdemeanor related to the practice of embalming or funeral directing; or a felony, (1)--$500 - $5,000;

(ii) Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind, NONE;

(iii) Unfitness by reason of present substance abuse, NONE.

(C) Texas Occupation Code §651.453, Unethical Advertising. The use of any advertising statement of a character that misleads or deceives the public or use of, in connection with advertisements, the names of person who do not hold a license as a funeral director or embalmer and representing them as being so licensed, (1)--$500 - $3,000.

(D) Texas Occupation Code §651.454, Other Unethical Conduct in Soliciting Customers.

(i) Failure by any person arranging for funeral services or merchandise to: provide a prospective consumer with a copy

of the brochure required by §651.404 at the beginning of the arrangement process (1)--$500 - $5,000;

(ii) provide a retail price list to an individual inquiring in person about any funeral service or merchandise for that person to keep, (2)--$500 - $5,000;

(iii) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person; or (3)--$500 - $5,000

(iv) provide general price information by telephone within a reasonable time, (4)--$500 - $5,000;

(v) restricting, hindering, or attempting to restrict or hinder:

(I) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not deceptive or unfair to consumers, or

(II) agreements for funeral services between any consumer or group of consumers and funeral directors and embalmers, (b)(1) and (2)--$500 - $5,000;

(vi) Whenever a licensee, provisional licensee, or any other person, whether an employee, agent, or representative or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business of such funeral establishment, unless such solicitation is made pursuant to a permit issued under Chapter 154 Texas Finance Code, (c)--$1,000 - $5,000.

(E) Texas Occupation Code §651.455, False or Misleading Statements Regarding Funeral Merchandise or Funeral Services.

(i) The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (1)--$500 - $5,000;

(ii) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (2)--$500 - $5,000;

(iii) the airtight or watertight properties of a casket or outer enclosure, (3)--$500 - $5,000;

(iv) representations as to licensed personnel in the operation of a funeral establishment, (4)--$500 - $5,000.

(F) Texas Occupation Code §651.456, Unethical Conduct Regarding Custody of Dead Human Body

(i) Taking custody of a dead human body without the permission of the person or the agent of the person authorized to make funeral arrangements for the deceased, (1)(A)--$250 - $5,000;

(ii) or without the permission of the medical examiner or the justice of the peace when a medical examiner or justice of the peace has jurisdiction over the body under Articles 49.02, 49.03, 49.04, and 49.05, Code of Criminal Procedure, (1)(B)--$250 - $5,000;

(iii) refusing to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased, (2)--$250 - $5,000.

(G) Texas Occupation Code §651.457, Unethical Conduct Regarding Embalming.

(i) embalming a body without the expressed written or oral permission of a person authorized to make funeral arrangements for the deceased, (a)(1)(A)--$250 - $5,000, or;

(ii) without making a documented reasonable effort over a period of at least three (3) hours to obtain the permission, (B)--$250 - $5,000;

(iii) embalming or attempting to embalm without proper authority a dead human body, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body, (2)--$250 - $5,000;

(iv) allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with §651.407, (3)--$250 - $5,000;

(v) places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license, (4)--$250 - $5,000.

(H) Texas Occupation Code §651.458, Unethical Conduct by Funeral Establishment. A person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise, $100 - $5,000;

(I) Texas Occupation Code §651.459, Other Unethical Conduct In Providing Funeral Services.

(i) willfully makes a false statement on a death certificate or a document required by this chapter or a rule adopted under this chapter, (a)(1)--$500 - $2,000;

(ii) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer, (2)--$1,000 - $5,000;

(iii) dishonest conduct, willful conduct, negligence, or gross negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public, (3) $500 - $5,000;

(iv) causes the execution of a document by the use of fraud, deceit, or misrepresentation, (4)--$750 - $5,000;

(v) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead bodies may be turned over to a particular funeral director, embalmer or funeral establishment, (5)--$1,000 -$5,000;

(vi) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund, (6)--$250 - $5,000;

(vii) performing acts of funeral directing or embalming that are outside the licensed scope and authority of the licensee, or performing acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts, (7)--$500 - $5,000;

(viii) Statement or implication by a funeral director or embalmer that a consumer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased, (b)--$500 - $5,000;

(ix) Failure by the Funeral Director in Charge to provide a funeral director or an embalmer for direction or personal supervision for a "first call", (c)--$500 - $5,000.

(J) Texas Occupation Code §651.460, Prohibited Practices Related To Failure to Comply With Other Legal Requirements.

(i) arranges for funeral services or merchandise and fails to provide a customer with a purchase agreement as required by §651.406, (a)(1)--$500 - $5,000;

(ii) fails to retain and make available to the commission, on request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this chapter for two years after the date of distribution or signing, (2)--$250 - $5,000;

(iii) violation of this chapter, any rule adopted under this chapter, an order by the commission revoking, suspending, or probating a license, an order assessing and administrative penalty, or an agreement to pay an administrative penalty regardless of whether the agreement is express or implied by §651.554, (3)--$500 - $5,000;

(iv) allows the use of a dead human body by an embalming establishment for research or educational purposes without complying with §651.407, (4)--$500 - $5,000;

(v) associated with the funeral establishment, whether as an employee, agent, subcontractor, assignee, owner, or otherwise, and whether licensed or unlicensed, to comply with chapter or a rule adopted under this chapter, (5)--$100 - $5,000;

(vi) failure of a funeral establishment to substantially comply with §651.351 Licensed Required violation is against the funeral establishment, (b)(1)--$250 - $5,000;

(vii) the funeral establishment or a person acting on behalf of the funeral establishment violates Chapter 193 or 361, Health and Safety Code - violation is against the funeral establishment, (2)--$250 - $5,000;

(viii) any violation by a funeral establishment or a person acting on behalf of a funeral establishment or any person directly or indirectly connected with a funeral establishment of Chapter 154, Finance Code or a rule adopted under that chapter, (3)--$250 - $5,000.

(3) Based upon consideration of the following factors, the Executive Director may use the following criteria in the recommendation to the commissioners for the assessment of administrative penalties:

(A) the severity of the offense plus 0 - 10 points

(B) the danger to the public plus 0 - 10 points

(C) the number of repetitions of offense plus 0 - 10 points

(D) the number of complaints previously found justified against the licensee plus 0 - 10 points

(E) the length of the time licensee has practiced plus 0 - 10 points

(F) the actual damage, physical or otherwise, caused by the violations; plus 0 - 10 points

(G) the deterrent effect of the penalty imposed plus 0 - 10 points

(H) refusal by licensee to correct or stop violations plus 0 - 10 points

(I) penalties imposed for related offenses plus 0 - 10 points

(J) any other mitigating or aggravating circumstances plus or minus 0 - 10 points

(K) attempts by licensee to correct or stop violations minus 0 - 10 points

(4) Penalties imposed by the commission using the guidelines of paragraphs (2) and (3) of this section may be imposed for each violation, but may not exceed the following limitations:

(A) imposition of an administrative penalty not to exceed $5,000 for each count or separate offense;

(B) utilizing the point system described in paragraph (3) of this section, a total point accumulation of 0 - 10 results in a penalty less than $1,000; 10 - 20 points result in a penalty between $1,000 - $2,000; 20 - 30 points result in a $2,000 penalty; 30 - 40 points result in a penalty between $2,000 - $3,000; 40 - 50 points result in a penalty of $3,000; 50 - 60 points result in a penalty of between $3,000 - $4,000; 60 - 70 points result in a penalty of $4,000; 70 - 80 points results in a penalty of $4,500; 80 - 100 points results in a penalty of $5,000.

(5) The provisions of paragraphs (1) - (4) of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws.

(6) After a hearing, or with the waiver of a hearing, the commission may, in it's discretion, using the disciplinary guidelines in paragraphs (2) and (3) of this section,

(A) place a license on probation for a period of time and subject to such conditions as the commission may specify;

(B) suspend or revoke a license; or

(C) deny the application for a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202149
Kevin Heyburn
Executive Director
Texas Funeral Service Commission
Effective date: May 16, 2012
Proposal publication date: January 6, 2012
For further information, please call: (512) 936-2469

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.3

The Texas Funeral Service Commission (commission) adopts an amendment to §203.3, concerning Funeral Director in Charge, without changes to the proposed text as published in the January 13, 2012, issue of the *Texas Register* (37 TexReg 106). The amendment is adopted in order to clarify that an individual can not be designated as the funeral director and embalmer in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary

establishment. The amendment is also important to the simplification and streamlining of the provisional license program.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202150
Kevin Heyburn
Executive Director
Texas Funeral Service Commission
Effective date: May 16, 2012
Proposal publication date: January 13, 2012
For further information, please call: (512) 936-2469

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.2, 681.14, 681.15, 681.41, 681.46, 681.72, 681.81, 681.91, 681.93, 681.112, and 681.125 and new 681.172, concerning the licensing and regulation of professional counselors. Sections 681.81, 681.93, and 681.125 are adopted with changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8329). Sections 681.2, 681.14, 681.15, 681.41, 681.46, 681.72, 681.91, 681.112 and 681.172 are adopted without changes, and the sections will not be republished.

The amendments are adopted to ensure that the rules are updated to reflect current legal, policy, and operational considerations; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.2, 681.14, 681.15, 681.41, 681.46, 681.72, 681.81, 681.91, 681.93, 681.112, and 681.125 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed.

SECTION-BY-SECTION SUMMARY

The definition of "art therapy intern" in §681.2(5) is deleted for clarity as an LPC-Intern cannot hold the art therapy designation. Paragraphs (6) - (14) of the section are renumbered to reflect the deletion of paragraph (5).

Section 681.14(a)(1) is amended to collect a fee of $190 for application, and intern license, and a fee for $100 for a two-year initial license which replaced the $95 fee which included the $90 application fee plus the $5 Texas Online fee. This is not an increase in fees because the fees are being collected up front instead of the rest at the time the license is upgraded to full licensure. Subsection (a)(2) is deleted as obsolete concerning examination fees as determined by the board, as the fee has not been assessed by the board since 2005. Subsection (a)(3) is deleted as obsolete, as the temporary license extension fee has not been collected in a number of years and required renumbering of the remaining paragraphs of the subsection. The deletion of subsection (c) will align the section with §681.15 concerning the reimbursement of licensing fees.

Section 681.15(b) - (d) is deleted as some fees might be refunded, depending on the circumstance.

Section 681.41(aa) is added to require a licensee to obtain a copy of the divorce decree and current custody agreement before counseling a minor and subsection (bb) is relettered accordingly.

Section 681.46(c) is amended to add a time limit on when an address or name change must be received in the board office.

Section 681.72(d) is amended to show that the supervisor is responsible for submitting the supervisor agreement form for any new site or intern change. New subsection (e) further clarifies supervision hour approval and this results in renumbering of subsections (f) and (g).

Section 681.81(g) is deleted as a result of a comment, until such time that the board may determine a possible exemption to the rule regarding application time limits and reciprocity from another state.

Section 681.91 is amended to remove references to supervised experience gained prior to 1994 in subsection (b); subsection (k) restates the requirement for the supervisor to submit the supervisor agreement form to the board office for changes or additional supervisees or sites; and subsection (l) is amended to restate that a new supervisor agreement form must be submitted for each new supervisor or site before supervision begins. Subsection (m) is relettered due to the addition of the new subsections (k) and (l).

Section 681.93(c)(1) is amended to limit the number of years a supervision course is accepted prior to application of the supervisor status. Subsection (d) is amended to require the supervisor to maintain a more detailed log of supervision.

Section 681.112 is amended for clarity regarding the required exams for licensure.

Section 681.125(e) is amended to include the ethics requirement for licensees returning to active status; subsection (g) is amended to require a new supervision course for LPC-Supervisors who have gone on inactive status for more than two years; and subsection (i) is amended to limit the number of years an LPC-Intern can be on inactive status.

Section 681.172 is added to outline the due process for licensees in violation of an Agreed Order.

COMMENTS

The board received the following individual comments on the proposed rules during the comment period. The commenters were not against the rules in their entirety; however, they had

recommendations for change as discussed in the summary of comments. The board's response follows each comment.

Comment: Concerning §681.41, there were 15 comments opposing the requirement to obtain and review a current copy of the custody agreement or court order, as well as any applicable divorce decree, and require the licensee to maintain these documents in the client's record.

Response: The board disagrees. In order to ensure due process the board feels that the entire decree is necessary. No change was made as a result of the comments.

Comment: Concerning §681.81, there were 7 comments opposing adding a limit to the time between earning a degree and application unless applying by reciprocity from another state.

Response: The board disagrees, but is withdrawing proposed subsection (g) of this section until a later time with the possibility of adding an exemption to the rule.

Comment: Concerning §681.93, there were 2 comments opposing the requirement for the supervisor to submit the supervisor agreement form into the board office.

Response: The board disagrees. The board feels it is the responsibility of the board approved supervisor to ensure the supervisor agreement forms have been submitted appropriately and added new language "Application for supervision status must be submitted within 2 years of completing the supervision course."

Comment: There were 2 comments agreeing with the requirement for the supervisor to submit the supervisor agreement form into the board office.

Response: The board agrees. No further change was made as a result of the comments.

Comment: Concerning §681.125, there were 3 comments opposing the requirement to take new supervision course if their license was expired or inactive for over two years.

Response: The board disagrees. The board feels the counselor needs to be up-to-date on all rules and laws concerning Licensed Professional Counselors-Interns; therefore, the new course is required for anyone not practicing as a Licensed Professional Counselor or Licensed Professional Counselor Supervisor for over two years. The requirement to again complete "a board approved 40 hour supervisor course or equivalent" was added to the rule.

SUBCHAPTER A. THE BOARD

22 TAC §§681.2, 681.14, 681.15

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202204
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER C. CODE OF ETHICS

22 TAC §681.41, §681.46

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202205
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202206
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §681.81

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

§681.81. General.

(a) The board shall accept as meeting academic requirements, graduate work done at American universities which hold accreditation from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign universities shall be acceptable only if such course work would be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. If degrees or course work cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or course work, the board may consider, on a case-by-case basis, accepting degrees or course work based on other evidence presented by the foreign graduate applicant.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no course work which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202207
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §681.91, §681.93

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

§681.93. Supervisor Requirements.

(a) All internships physically occurring in the State of Texas for which a supervisory agreement is received on or after September 1, 2003, must be completed under a supervisor who holds a regular license issued by the board. The supervisor must have held the license in good standing for at least 24 months from the date of issuance. Completion of a doctoral degree in counseling or a counseling-related field at an accredited university may be substituted for 12 months of the 24 month requirement.

(b) For all internships physically completed in a state or jurisdiction other than Texas, the supervisor must be a person licensed or certified by the state or jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the intern. If the state or jurisdiction has no appropriate licensure or certification, the applicant must submit to the board relevant official graduate transcripts, documentation of practicum and experience, and any professional certifications which demonstrate that the person is qualified to supervise the type of counseling practice performed by the intern.

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth below; and shall submit a $100 processing fee. Application for supervision status must be submitted within 2 years of completing the supervision course. Licensees who are in an accredited doctorate program are exempt from the 2 year time limit. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a $100 renewal processing fee. The 40 clock-hours of training shall be met through the following:

(A) a graduate course in counselor supervision taken for credit at an accredited college or university; or

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education).

(2) The 40 clock-hours shall be completed over a time period not to exceed 90 days and shall include at least the following:

(A) defining and conceptualizing supervision and models of supervision for at least three clock-hours;

(B) supervisory relationship and counselor development for at least three clock-hours;

(C) supervision methods and techniques for at least 12 clock-hours, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods;

(D) ethical, legal, and professional issues for at least 12 clock-hours, covering roles for supervision and standards of practice, Subchapter B of this title (relating to Authorized Counseling Methods and Practices), §681.92 of this title (relating to Experience Requirements (Internship), and §681.93 of this title (relating to Supervisor Requirements), other codes of ethics, and ethical and legal dilemmas; and

(E) executive and administrative tasks for at least three clock-hours covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(3) At the time of application for a license, a person must submit required documentation showing that the person's supervisor meets the requirements of this section.

(d) A board approved supervisor shall maintain and sign a record(s) to document the date of each supervision conference and document the LPC Intern's total number of hours of supervised experience accumulated up to the date of the conference. The record shall reflect the site where the hours were accrued and the content of the session.

(e) The full professional responsibility for the counseling activities of an LPC Intern shall rest with the intern's board approved supervisor(s).

(1) The supervisor shall ensure that the LPC Intern is aware of and adheres to Subchapter C of this chapter (relating to Code of Ethics).

(2) a relationship between the supervisor and the LPC Intern that impairs the supervisor's objective, professional judgment shall be avoided.

(3) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the LPC Intern.

(4) If a supervisor determines that the LPC Intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC Intern.

(5) A supervisor shall timely submit accurate documentation of supervised experience.

(f) A supervisor whose license expires or is revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may not count as acceptable hours unless approved by the board.

(g) A supervisor who become subject to a board disciplinary order is no longer an approved supervisor. The person shall inform all LPC Interns of the board disciplinary order and assist the LPC Interns in finding alternate supervision.

(h) A supervisor may not be an employee of an LPC Intern.

(i) The LPC Intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(j) Supervisory status may be denied, revoked, or suspended following a fair hearing for violation of the Act or rules. The fair hearing will be conducted under the fair hearing rules of the Department of State Health Services.

(k) A supervisor whose supervisory status has expired may be required to refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(l) Supervision of the intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202208

Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER H. LICENSING

22 TAC §681.112

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202209
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §681.125

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

§681.125. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request prior to the expiration of the license along with the inactive fee. Inactive status periods shall be granted only to persons whose licenses are current or whose licenses have been expired for less than one year.

(b) An inactive status period shall begin on the first day of the month following payment of an inactive status fee.

(c) A person may not act as a professional counselor, represent himself or herself as a professional counselor, or provide counseling treatment intervention during the inactive status period, unless exempted by the Act.

(d) A person may remain subject to investigation and action under Subchapter K of this chapter (relating to Complaints and Violations) during the period of inactive status.

(e) A person must notify the board in writing to return to active status. Active status shall begin after receipt of proof of successful completion of the Texas Jurisprudence Examination, completion of 24 hours continuing education including 4 hours in counselor ethics, within the 2 years preceding reinstatement of active status and payment of applicable fees.

(f) The person's next continuing education cycle will begin upon return to active status and end on the day of license expiration.

(g) A person previously approved as a supervisor whose supervisor status has expired for 2 or more years or been inactive for 2 or more years and who wishes to resume the supervisor status or active license status may become a supervisor by again completing a board approved 40 hour supervisor course or equivalent.

(h) The licensee must renew the inactive status every two years.

(i) An LPC Intern's license shall not exceed 4 years on inactive status. Should the Intern fail to return to active status within 4 years, the license will be considered null and void and the person will be required to reapply for licensure under current rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202210
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §681.172

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202211
Glynda Corley
Chair
Texas State Board of Examiners of Professional Counselors
Effective date: May 20, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 776-6990

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER CC. ADVISORY COMMITTEES

28 TAC §1.2828

The Commissioner of Insurance (commissioner) adopts new §1.2828, relating to the Texas Department of Insurance's (department's) advisory committees. Section 1.2828 is adopted with changes to the proposed text published in the March 2, 2012, issue of the *Texas Register* (37 TexReg 1464) and will be republished.

REASONED JUSTIFICATION. The new section is necessary to address the administration of the department's advisory committees. Section 32.151 and §32.152 of the Insurance Code require the commissioner to adopt rules regarding the department's advisory committees.

HOW THE SECTION WILL FUNCTION. The new section provides for procedures relating to the department's advisory committees. The new section sets out the purpose, structure, and use of advisory committees and establishes a process by which the department will periodically evaluate an advisory committee to ensure its continued necessity. The new section will be consistent with Chapter 2110 of the Government Code.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The new section is adopted under the Government Code Chapter 2110 and the Insurance Code §§32.151, 32.152, and 36.001. Chapter 2110 of the Government Code deals with state agency advisory committees.

Section 32.151 and §32.152 of the Insurance Code provide that the commissioner shall adopt rules regarding the purpose, structure, and use of advisory committees as well as a process by which the department shall evaluate an advisory committee to ensure its continued necessity.

Section 36.001 of the Insurance Code provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§1.2828. Advisory Committees.

(a) The department may create advisory committees as it deems necessary in accordance with Government Code Chapter 2110 to assist, advise, and provide expertise to the department, or as required by statute. Committees are not responsible for rulemaking or policymaking.

(b) The following provisions apply to an advisory committee established by the department, unless different requirements are imposed by statute:

(1) Role and responsibility.

(A) An advisory committee will review department issues and provide advice to the department.

(B) An advisory committee may make recommendations to the department.

(2) Composition.

(A) The commissioner or the commissioner's designee may appoint one or more department staff in a non-member position to assist each advisory committee. Such non-member positions are non-voting.

(B) The commissioner or the commissioner's designee will appoint a reasonable number of members, not to exceed 24, to each advisory committee.

(C) An advisory committee will be composed of members from diverse geographical areas who have demonstrated expertise in the area of the particular advisory committee.

(D) The committee must select from among its members a presiding officer who presides over the advisory committee, establishes meeting agendas, and reports to the department.

(3) Membership.

(A) Members will be appointed for terms not to exceed four years. The commissioner or the commissioner's designee may appoint members for staggered terms. Members may serve after expiration of their term until the commissioner or the commissioner's designee appoints a replacement.

(B) If a vacancy occurs, the commissioner or the commissioner's designee will appoint a qualified replacement to serve the unexpired portion of that term.

(C) Membership is voluntary.

(D) Members serve on an advisory committee without compensation. Travel reimbursement and per diem expenses incurred in performing official duties of membership will be permitted only if authorized by the Legislature in the General Appropriations Act or through the budget execution process under the Government Code Chapter 317 if the advisory committee is created after it is practicable to address the existence of the committee in the General Appropriations Act.

(4) Meetings.

(A) An advisory committee must meet at least quarterly unless otherwise directed by the commissioner or designee.

(B) A meeting of the advisory committee may be called by the presiding officer, the commissioner, or the commissioner's designee.

(C) A simple majority of advisory committee members will constitute a quorum. An advisory committee may transact official business only when a quorum is present.

(D) An advisory committee must comply with the Open Meetings Act, Government Code Chapter 551.

(5) Training.

(A) Each member of an advisory committee must receive training regarding the Open Meetings Act.

(B) Each member of an advisory committee must receive training as to the department's mission, organizational structure, and goals.

(C) Each member of an advisory committee must receive training necessary to perform his or her official duties as a committee member.

(6) Evaluation.

(A) An advisory committee will regularly report to the commissioner or designee its recommendations.

(B) When requested by the commissioner or the commissioner's designee, an advisory committee must file a report with the department containing:

(i) the minutes of all meetings;

(ii) an executive summary including details as to the committee's work and usefulness; and

(iii) a list of recommendations.

(7) Duration.

(A) Unless an abolishment date is set by rule, an advisory committee will operate as long as the commissioner or the commissioner's designee deems necessary based on an annual evaluation of the need and usefulness of each committee.

(B) If an abolishment date for a committee is set by rule, the committee will be abolished on its abolishment date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 23, 2012.

TRD-201202091
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: May 13, 2012
Proposal publication date: March 2, 2012
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

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

31 TAC §53.2

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 29, 2012 adopted an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, without changes to the proposed text as published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 873).

The amendment alters the provisions of subsection (d)(4) to specify that residents of the State of Oklahoma who are 65 years of age or older are exempt from the fishing license requirements of the State of Texas.

Oklahoma recently raised the minimum age at which Texas residents are exempt from the licensing requirements of Oklahoma, from 64 to 65. In order to be consistent with the requirements of Parks and Wildlife Code, §41.008, which authorizes the department to agree with any other state to license sport fishing by residents of the other state at the same fee as Texas residents

are licensed in that state, the department is altering the minimum age under Texas rules for fishing license exemption.

The rule will function by establishing the minimum age at which Oklahoma residents are exempt from licensing requirements in Texas for purposes of sport fishing. Of 12 comments received, five expressed a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that Oklahoma residents should not be exempt from license requirements under any circumstances in order to raise additional revenue for state parks. The department disagrees with the comment and responds that revenue from fishing license sales is prohibited by law from being used to fund state parks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas should not be dictated to by any other state. The department disagrees with the commenter that Texas is being dictated to and responds that Texas and Oklahoma have a reciprocal agreement that gives Texas and Oklahoma residents exactly the same benefits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the age limit should be reduced. The department disagrees with the comment and responds that a reduction in the age limit below 64 years age would be inconsistent with the age limit established by Oklahoma for Texas residents to be exempt from licensing requirements. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if Texas residents have to buy a license, Oklahoma residents should have to buy a license. The department agrees with the comment and responds that the rule as adopted establishes reciprocity with Oklahoma regarding fishing license requirements that are applicable to persons in both states. No changes were made as a result of the comment.

One commenter opposed adoption and stated that persons 64 years age and older are most likely on fixed incomes. The department neither agrees nor disagrees with the comment. No changes were made as a result of the comment.

The amendment is adopted under the authority of Parks and Wildlife Code, §41.0086, which authorizes the department to agree with any other state to license sport fishing by residents of the other state at the same fee as Texas residents are licensed in that state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202213
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 29, 2012 adopted amendments to §§57.971, 57.973, 57.975, and 57.981, concerning the Statewide Recreational and Commercial Fishing Proclamations, without changes to the proposed text as published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 875).

The amendment to §57.971, concerning Definitions, alters the definition of "gear tag" to clarify that provisions governing the dating of gear tags do not apply to commercial crab traps. The provisions governing the use of crab traps under a commercial license require the use of gear tags, but there is no requirement that a gear tag be dated, since commercial licensees must document and report their catch.

The amendment to §57.973, concerning Devices, Means, and Methods, requires the use of gear tags on throwlines and minnow traps in fresh water, and would reduce the length of time required for gear-tag replacement on employed devices from 30 days to 10 days. Under current rules, gear tags are required to be affixed to most fishing devices that are typically left unattended, such as trotlines. In fresh water, only throwlines and minnow traps are not required to have a gear tag affixed to them when in use. The department has determined that because such devices continue to fish and represent a danger to birds and mammals when they are abandoned, it is necessary to require a gear tag to be employed when they are used. Under Parks and Wildlife Code, §12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission. By requiring throwlines and minnow traps to be affixed with a gear tag in order to be lawfully used, the department will be able to prevent abandoned throwlines and minnow traps to continue to be dangerous to fish and wildlife populations. In the course of investigating the need for the gear tag requirement for throwlines and minnow traps, the department also considered the current rule requiring gear tags to be replaced or re-dated at least every 30 days. In researching similar regulations in other states, the department determined that among the states that require gear tags to be dated, the Texas gear tag rules allowed the longest time period in the country between mandatory datings. Therefore, the amendment to §57.973 reduces from 30 days to 10 days the time period that any device for which a gear tag is required could be left in the water without being re-dated or re-tagged with a new gear tag. The department considers that the 10-day period, with proper planning, would allow any person two weekends of fishing effort before having to re-tag or re-date a device.

The amendment to §57.973 also restricts the use of passive taking devices (trotlines, juglines, and throwlines) on Lake Naconiche in Nacogdoches County. Lake Naconiche will be opened to the public this year. Angling effort is expected to be high, especially during the next several years. Since the largemouth bass population is still developing, it is important to prevent harvest of smaller bass to ensure that a quality population is established. Restrictions on the use of passive taking devices (trotlines, juglines, and throwlines) will provide additional protection for expanding fish populations and is more compatible with other uses planned for this small reservoir (i.e., swimming and water skiing).

The amendment to §57.973 also implements a two-device restriction on the number of pole-and-line fishing devices that a person may use simultaneously while fishing from a dock, pier, jetty, or other man-made structure on a state park. Because of easy access, proximity to population centers, and waiver of fishing license requirements, state parks are popular fishing destinations. State parks are important angling destinations because they are good places to introduce people to the angling experience, particularly youth and families. The department has received complaints that some persons are monopolizing pier/jetty/dock space at state parks by using multiple fishing devices, usually fishing poles. Therefore, the amendment as adopted restricts the number of devices that a person may employ while fishing in a state park from a pier, jetty, dock, or other man-made structure. Each person would be allowed to use two fishing poles; no other fishing devices would be allowed. The amendment is necessary to ensure equitable distribution of angling opportunity and prevent user conflicts.

The amendment to §57.975, concerning Freeze Event Closures, clarifies that no person may take, or attempt to take, aquatic life in an affected area during a freeze closure. The current rule specifically prohibits the take of fish by hook-and-line, pole-and-line, or throwline in an area that is closed because of a freeze event. There has been some confusion on the part of anglers who interpret the current rule to allow the harvest of fish by hand, dip net, or other means that are not specifically prohibited under the provisions of §57.975. This interpretation is erroneous. Under current §57.973, it is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized, and devices that are unlawful under §57.973 would still be unlawful in an area that has been closed due to a freeze event. The cumulative effect of §57.973 and §57.975 is to prohibit the take of fish by any means in an area closed during a freeze event. To eliminate confusion about the legality of other fishing methods, the department seeks to make this clear.

The amendment to §57.981, concerning Bag, Possession, and Length Limits, changes minimum length limit for largemouth bass back to the statewide 14-inch limit on three reservoirs: Aquilla Reservoir (Hill County); Lake Fort Phantom Hill (Jones County); and Lake Proctor (Comanche County).

Aquilla Reservoir is a 2,366-acre reservoir with scarce amounts of native aquatic vegetation. Nearly 35% of the reservoir is covered in standing timber, and this habitat has declined drastically since impoundment (1986). A recent study indicated the reservoir could be losing as much as 218 acre-feet of volume each year through erosion and sedimentation from within its watershed. An 18-inch minimum length limit was implemented in 1994 to increase the density of largemouth bass and provide greater availability of largemouth bass greater than 18 inches for angler catch. Largemouth bass densities and population indices spiked between 1998 and 2002; however, these indices are currently below pre-regulation values. Largemouth bass densities remain improved over pre-regulation numbers but are also well below the spike observed in 2000 and 2002. Creel survey information indicates that few anglers are fishing for bass. The department has determined that the largemouth bass fishery is habitat-limited, and the 18-inch minimum length limit is no longer effective or needed. Therefore, the amendment as adopted restores the statewide 14-inch minimum length limit.

Fort Phantom Hill is a 4,213-acre reservoir that was impounded in 1938 and is operated by the city of Abilene. A 16-inch minimum length limit for largemouth bass was implemented in September 1994. The goals of the regulation were to increase relative abundance of 14 to 16-inch largemouth bass and to increase angler catch rates. Mean electrofishing catch rates of 14 and 16-inch bass were similar under the two length limits. Population indices were slightly higher but statistically similar. Angler catch rates varied little under the two regulations. Water level elevation likely has a large influence on the largemouth bass population in this reservoir. A model using water level elevations from April-July, and the difference in elevation from the previous October to the next July accounted for 92% of the variation in catch rates of small (less than 8 inches) largemouth bass from 1996-2009. Similar to other West Texas reservoirs where a 16-inch minimum length limit was attempted, there appears to be no additional benefit to anglers compared with a 14-inch limit. Therefore, the amendment as adopted restores the statewide 14-inch minimum length limit.

Lake Proctor is a 4,537-acre reservoir that was impounded in 1963. A 16-inch minimum length limit for largemouth bass was implemented in September 2002 to prolong a "boom" phase following severe drought conditions that lasted from 1998-2001. Increased water levels in 2001 resulted in an extremely large 2001 year class of largemouth bass. The increase to a 16-inch minimum length limit was designed to improve size structure for a longer period of time than could be achieved under the 14-inch limit. The post-drought changes that occurred in the largemouth bass population at Lake Proctor were similar to changes that occurred in other largemouth bass populations from area reservoirs that experienced the same drought-related problems but had a 14-inch minimum length limit. Essentially, either limit provided the same protection to a recovering largemouth bass population. Additionally, the 16-inch limit failed to provide long-term improvements beyond what a 14-inch limit would provide. Therefore, the amendment as adopted restores the statewide 14-inch minimum length limit.

The amendment to §57.981 also changes the daily bag limit for striped bass back to the statewide five-fish limit on Possum Kingdom Reservoir (Palo Pinto County). Possum Kingdom is a 15,588-acre reservoir that was impounded in 1941. In 2001, golden alga caused a fish kill that greatly reduced the abundance of striped bass. In response to this fish kill, striped bass were stocked to rebuild the population. Also, the daily bag limit for striped bass was decreased from five to two in September 2002. Fish kills continue to negatively affect the rebuilding the striped bass population. Catch rate of striped bass in gillnets has decreased from 9.3 fish per net night in 1999 to 0.2 per net night in 2011. Striped bass take between two and four years for at Possum Kingdom to attain the legal length limit of 18 inches. The periodic fish kills prevent many fish from attaining legal size. Increasing the daily bag to allow angler to take additional fish when they are infrequently present would better utilize the resource.

The amendment to §57.981 also implements an 18-inch minimum length limit and five-fish daily bag for largemouth bass on Lake Naconiche (Nacogdoches County), a reservoir that will open to angling September 1, 2012. The department plans to intensively manage this water body to enhance and protect the largemouth bass population. Lake Naconiche was impounded in 2009 and will be 692 acres at full pool. Lack of rainfall has prevented the lake level from reaching full pool. The lake will open to angling September 1, 2012. Threadfin shad, bluegill, channel catfish, white and black crappie, and Florida largemouth bass were stocked in 2010 and 2011. Angling effort is expected to be high, especially during the first several years. Since the large-

mouth bass population is still developing, it is important to protect fish to 18 inches in order to prevent harvest of 14- to 18-inch bass and ensure that a quality population is established. Additionally, restricting the use of passive taking devices (trotlines, juglines, and throwlines) will provide additional protection for the expanding fish populations and is more compatible with other uses planned for this small reservoir (i.e., swimming and water skiing).

The amendment to §57.981 also removes a reference to Town Lake in Travis County. In 2008, Town Lake was renamed Lady Bird Lake.

The rules as adopted will function to establish the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size of aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The department received 34 comments opposing adoption of the provision in proposed §57.971 that administratively transfers regulations regarding alternative licensing procedures and the use of the license log. Four commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the license log should be retained for the Super Combination license. The department agrees with the comment and responds that the rule as adopted is an administrative transfer of an existing rule and is nonsubstantive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should offer a license that allows a hunter to kill only two deer. The department disagrees with the comment and responds that it is beyond the scope of this rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is absurd to require a log on a fishing license. The department disagrees with the comment and responds that the rule is a nonsubstantive administrative transfer of an existing provision that provides for a license log in the event that the department's automated license system cannot be used. No changes were made as a result of the comment.

One comment opposed adoption and stated that there should be no license requirement for hunting hogs. The department disagrees that the comment is germane to the rulemaking and responds that the rule as adopted applies only to aquatic resources. No changes were made as a result of the comment.

The department received 1,328 comments supporting adoption of the proposed amendment.

The department received 24 comments opposing adoption of the provisions in proposed §57.975 that restricts the number of pole-and-line fishing devices that a person may use simultaneously while fishing from a dock, pier, jetty, or other man-made structure on a state park. Six commenters provided a reason or rationale for opposing adoption.

One commenter opposed adoption and stated that only persons fishing without a fishing license in state parks should be restricted. The department disagrees with the comment and responds that applying the restriction only to persons who fish in state parks under the department's "free fishing in state parks" promotion would not achieve the goal of the rule, which is to reduce user conflicts and equitably distribute angling opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should restrict each angler to two legal devices (not just pole-and-line). The department disagrees with the comment and responds that in essence, the rule as adopted simply adds state parks to the effectiveness of an existing regulation that restricts devices to pole-and-line only on community fishing lakes and sections of rivers lying totally within the boundaries of state parks. The underlying rationale for this restriction is to limit anglers to two hooks per person, or, put another way, the ability to catch no more than two fish at any time, while personally present. The introduction of multi-hook or passive gears would thwart this rationale. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the limit should be three devices per person. The department disagrees with the comment and responds that in essence, the rule as adopted simply adds state parks to the effectiveness of an existing regulation that restricts devices to pole-and-line only and limits the number of devices per person on community fishing lakes. The intent of the current rule is to allow for the reasonable enjoyment of the pursuit of the resource without interfering with someone else's opportunity to do the same thing, since the context of angling effort in state parks and community fishing lakes is, in general, a matter of limited public space. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department shouldn't be so restrictive. The commenter stated that it should be up to park personnel to decide if someone is creating a problem for others. The department disagrees with the comment and responds that a single, objective standard that applies to everyone is preferable to reliance on subjective judgment that may not be uniform from site to site. No changes were made as a result of the comment.

One commenter opposed adoption and stated that by excluding seines and crab nets, the fishing experience will be thwarted. The department disagrees with the comment and responds that the rule as adopted does not prohibit the use of other devices such as seines or crab nets except on manmade structures within parks and sections of rivers lying totally within the boundaries of state parks, where angling space is at a premium. No changes were made as a result of the comment.

One commenter opposed adoption and stated that fishing licenses should be required for all persons fishing within a state park. The department disagrees with the comment and responds that license requirement rules are outside of the scope of this rulemaking. No changes were made as a result of the comment.

The department received 132 comments supporting adoption of the proposed amendment.

The department received 12 comments opposing adoption of the provisions in proposed §57.975 to clarify that no person may take, or attempt to take, aquatic life in an affected area during a freeze closure. Five commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule is vague, unenforceable, and a waste of aquatic resources. The department disagrees with the comment and responds that the rule as adopted is a clarification of existing law, specifically prohibits certain behavior. The department believes that the amendment is clear and the wording of the amendment presents no enforcement problems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that residents should be able to fish at any time because sometimes the only opportunities some people get to go fishing are during freezes. The department disagrees with the comment and responds that during severe freeze events fish are particularly stressed and vulnerable to harvest in large numbers, which could have negative impacts on population structures, reproductive potential, and abundance. Therefore, the department has created rules to create thermal refuges where fish can gather and attempt to survive without being subject to angling pressure in addition to environmental stress. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should be allowed to collect fish that die. The department disagrees with the comment and responds that there is no way for the department to allow the recovery of dead fish without simultaneously creating the opportunity for persons to harvest fish that are alive but extremely vulnerable because of cold stress; therefore, it is necessary to prohibit the take of all fish in certain areas during freeze events. No changes were made as a result of the comment.

One commenter opposed adoption and stated that many people are complaining about too many rules and regulations. The department disagrees with the comment and responds that rules as adopted are biologically appropriate and effective in achieving the intended goal of the regulation, which is to protect fish during freeze events. No changes were made as a result of the comment.

The department received 99 comments supporting adoption of the proposed amendment.

The department received 69 comments opposing adoption of the provision in proposed §57.981 that requires the use of gear tags on throwlines and minnow traps in fresh water and reduces the length of time required for gear-tag replacement/update. Twenty-two commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule is an unenforceable waste of taxpayer dollars. The department disagrees with the comment and responds that rule as adopted is unambiguous and can be enforced at no additional expense to license buyers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the tag requirement is an attempt by the department to obtain revenue via fines for violations, and that devices left unattended for an excessive amount of time should simply be confiscated. The department disagrees that the rule as adopted is not for the purpose of generating revenue for the department. As noted elsewhere in this preamble, the purpose of the gear tag requirement is to allow the department to seize devices that have been abandoned because such devices exact a toll on wildlife. Also, under Parks and Wildlife Code, §12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission; therefore, an untagged device, because it is required to be tagged, is contraband and may be seized. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the gear tag update time period should remain at 30 days. The department disagrees with the commenter and responds that 10 days is a reasonably sufficient time for the updating of gear tags, especially since the 10-day period can include two full weekends. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that 10 days is too short a time period for saltwater gear. The department disagrees with the comment and responds that with proper planning, a 10-day period can include two full weekends, which the department believes is ample time to re-tag or update the tag on saltwater gear. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the time period for updating a gear tag should be 15 days. The department disagrees with the commenter and responds that in surveying similar regulations in other states, the department determined that 10 days is not an unusually short time period. No changes were made as a result of the comments.

One commenter opposed adoption and stated that tagging requirements are a precursor to imposing fees for revenue generation. The department disagrees with the comment and responds that the rule as adopted is not intended to generate revenue for the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the devices for which gear tags are required should not be lawful. The department disagrees with the comment and responds that the comment is beyond the scope of the rulemaking. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more frequent tag dating will not solve the problem of untagged gear. The department disagrees with the comment and responds that under Parks and Wildlife Code, 12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission; therefore, an untagged device, because it is required to be tagged, is contraband and may be seized. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear tags should have to be replaced or updated within 10 to 30 days. The department disagrees with the comment and responds that allowing up to 30 days for updating gear tags would defeat the purpose of the rule, which is to reduce the amount of time allowed for gear tag updating from the current 30-day period since such devices continue to fish and represent a danger to birds and mammals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the gear tag should not apply if the angler is personally present at all times that the device is employed. The department disagrees with the comment and responds that by requiring a gear tag to be attached to all devices, there is no potential for misunderstanding. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear tags should have to be updated every 24 hours. The department dis-

agrees with the comment and responds that the 10-day period adopted is believed sufficient to attain the goal of the regulation, which is to reduce the number of abandoned angling devices. No changes were made as a result of the comment.

The department received 99 comments supporting adoption of the proposed amendment.

The department received seven comments opposing adoption of the provision in proposed §57.981 that restores the statewide 14-inch minimum length limit on Lake Aquilla in Hill County. None of the commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. The department disagrees with the comments and no changes were made as a result of the comment.

The department received 88 comments supporting adoption of the proposed amendment.

The department received seven comments opposing adoption of the provision in proposed §57.981 that restores the statewide 14-inch minimum length limit on Lake Fort Phantom Hill in Jones County. None of the commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. The department disagrees with the comments and no changes were made as a result of the comment.

The department received 75 comments supporting adoption of the proposed amendment.

The department received four comments opposing adoption of the provision in proposed §57.981 that restores the statewide 14-inch minimum length limit on Lake Proctor in Comanche County. None of the commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. The department disagrees with the comments and no changes were made as a result of the comment.

The department received 80 comments supporting adoption of the proposed amendment.

The department received 13 comments opposing adoption of the provisions in proposed §57.981 that changes the daily bag limit for striped bass back to the statewide five-fish limit on Possum Kingdom Reservoir (Palo Pinto County). Four commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit should remain at two striped bass. The department disagrees with the comment and responds that fish kills caused by golden algae on Possum Kingdom Reservoir result in relatively few striped bass surviving to reach the 18-inch minimum length, which means that the daily bag limit has little, if any, impact on the population. The rule as adopted acknowledges this and allows more opportunity for anglers. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that it is nonsensical to increase the bag limit because the population is already low. The department disagrees with the comment and responds that the 18-inch minimum length limit is the most important protection for striped bass as the population attempts to recover from the effects of golden alga. The daily bag limit, as noted previously, is essentially irrelevant since so few fish survive to reach the minimum length limit. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the proposed amendment does nothing to protect the population from golden alga and that retaining the two-fish limit would leave breeding stock in place. The department disagrees with the comment and responds that the regulation is not intended to address golden alga and that the five-fish bag limit exerts virtually no influence on population because so few fish reach the 18-inch minimum length limit for legal harvest. No changes were made as a result of the comment.

The department received 75 comments supporting adoption of the proposed amendment.

The department received 12 comments opposing adoption of the provisions in proposed §57.973 and §57.981 that collectively implement an 18-inch minimum length limit and five-fish daily bag for largemouth bass and prohibit the use of juglines, trotlines, and throwlines on Lake Naconiche (Nacogdoches County). Five commenters articulated a specific reason or rationale for opposing adoption of the proposed amendment. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the 18-inch minimum length encourages overpopulation of undersized fish. The department disagrees with the comment and responds that the intent of the rule is to protect undersized fish during the initial period of angling pressure on Lake Naconiche. No changes were made as a result of the comment.

One commenter opposed adoption and stated that angling should be catch-and-release for the first five years and a slot limit thereafter, which would allow for better study and reduce the need for stockings in the future. The department disagrees with the comment and responds that the harvest of older fish at a sustainable level is not injurious to populations and that a slot limit is unnecessary if age structure remains satisfactory under a given harvest control. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be fair and either prohibit fishing or allow use of passive gear such as trotlines, juglines, and throwlines under the same bag and size restrictions as pole-and-line angling. The commenter also stated that the rule as proposed constituted favoritism and that statistical data cannot obscure the difference between right and wrong. The department disagrees with the comment and responds that harvest by passive gears is inherently less controllable than that of other angling means and more likely to result in overharvest and unwanted structural impacts to populations as well, since passive gears typically employ multiple hooks and fish indiscriminately and continuously without the need for human supervision. The rule as adopted is not intended to favor one type of user group over another, but to protect the fish populations on Lake Naconiche from overharvest.

One commenter opposed adoption and stated that the department should prohibit the retention of largemouth bass of greater than 24 inches in length, similar to the regulation in effect on Lake Nacogdoches. The department disagrees with the comment and responds that the harvest of some larger fish at a sustainable level is not injurious to populations and that a 24-inch minimum length limit is unnecessary if age structure remains satisfactory under a given harvest control.

One commenter opposed adoption and stated that many people are complaining about too many rules and regulations. The department disagrees with the comment and responds that rules as adopted are believed to be biologically appropriate and ex-

pected to be effective in both providing and distributing angling opportunity. No changes were made as a result of the comment.

The department received 76 comments supporting adoption of the proposed amendment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§57.971, 57.973, 57.975

The amendments are adopted under the authority of Parks and Wildlife Code, §42.010, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 42; §46.0085, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 46; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §66.007, which prohibits the possession or placement into public waters of exotic fish or shellfish except as authorized by rule or permit issued by the department; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202214
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2012.

TRD-201202215
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Effective date: September 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 389-4775

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DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 29, 2012 adopted an amendment to §57.972, concerning General Rules, with changes to the proposed text as published in the February 17, 2012, issue of the *Texas Register* (37 TexReg 875).

The change to §57.972 removes references to tarpon in subsections (h)(2) and (i)(1). The department removed the license log requirement for trophy tarpon in 2006 and the references are no longer necessary.

The amendment to §57.972 adds provisions governing the use of the license log and the alternative license system. In 2010 the department restructured hunting and fishing regulations to separate hunting rules from fishing rules and recreational fishing rules from commercial fishing rules. In the process, the department overlooked two regulations that remained in Chapter 65, Subchapter A, that affect red drum with respect to license log requirements and procedures to be followed in the event that the department is ever in the position of implementing an alternative licensing system. The amendment to §57.972 migrates the applicable portions of those rules (i.e., those affecting fisheries) to Chapter 57 to allow for intuitive reference.

The amendment to §57.972 also implements provisions to address the spread of exotic aquatic species such as zebra mussels and silver and bighead carp. At the current time, these species are present in Texas in limited numbers. Although possession and transport of these species is prohibited under Chapter 57, Subchapter A, additional regulations are needed to prevent the accidental or incidental movement of these species from one water body to another. The amendment as adopted consists of two provisions. The first prohibits any person from leaving specified water bodies in the possession of live, nongame fishes. This would prevent the accidental capture and movement of silver and bighead carp as a result of bait-collecting activities for other nongame fishes, especially gizzard or threadfin shad, which are quite similar in appearance. These species can be easily misidentified at smaller sizes and within a large quantity of fish. Collection and use of nongame fishes for bait on those water bodies would be legal. The provision affects the Red River downstream of the Lake Texoma dam to the Arkansas/Texas state line; Big Cypress Bayou downstream of Ferrell's Bridge

Dam on Lake O' the Pines (including the Texas waters of Caddo Lake); and the Sulphur River downstream of the Lake Wright Patman dam to the Texas/Arkansas border.

The second provision affects water bodies where zebra mussels have been found or have a high potential of occurrence. Zebra mussels have a free-swimming, microscopic larval stage called a veliger. Any water collected from water bodies where zebra mussels are present could contain veligers; thus, water transported from water bodies with known zebra mussel populations is a vector for the spread of zebra mussels to other water bodies. Under ordinary circumstances, the department would consider any person in possession of zebra mussel veligers to be in violation of Chapter 57, Subchapter A, which prohibits the possession of zebra mussels (which are listed as a harmful or potentially harmful shellfish). Under the amendment as adopted, the department will not consider a person in possession of veligers to be in violation of Chapter 57, provided live wells, bilges, and other receptacles or systems capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway. A person traveling on a public roadway via the most direct route to another access point located on the same body of water would not be required to drain or empty water. The provision affects Lake Lavon and the Red River from the I-44 bridge in Wichita County to the Arkansas/Texas border, including the Texas waters of Lake Texoma.

The rule as adopted will function to establish the periods of time when it is lawful to take or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take or possess aquatic animal life in this state; the species, quantity, age or size of aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

The department received two comments opposing adoption of the provisions in proposed §57.972 to control the spread of zebra mussels and two species of exotic carp (silver and bighead). One commenter articulated a specific reason or rationale for opposing adoption of the proposed amendment. The commenter stated that many people are complaining about too many rules and regulations. The department disagrees with the comment and responds that rules as adopted are believed to be biologically appropriate and are designed to prevent the spread of zebra mussels and silver and bighead carp. No changes were made as a result of the comment.

The department received 109 comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §42.010, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 42; §46.0085, which authorizes the department to prescribe the form and manner of issuance of the licenses and tags authorized by Chapter 46; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; §66.007, which prohibits the possession or placement into public waters of exotic fish or shellfish except as authorized by rule or permit issued by the department; and §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§57.972. General Rules.

(a) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(b) Game fish may be taken only by pole and line, except as provided in this subchapter.

(c) The bag and possession limits set forth in this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Subchapter C of this chapter (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(d) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(e) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(f) There is no open season on porpoises, dolphins (mammals), whales, or sawfishes (Pristis perotteti).

(g) It is unlawful:

(1) for any person to take or attempt to take fish by any means, or at any time or place, other than as permitted under this subchapter;

(2) for any person to possess fish within a protected length limit or in greater numbers than as permitted under this subchapter;

(3) for any person, while fishing on or in public waters, to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(4) for any person to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(5) for any person to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this paragraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source;

(6) for any person to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water (salt water or fresh water) that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(7) for any person to use any vessel to harass fish;

(8) for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is

designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish;

(9) for any person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas;

(10) for any person to knowingly take or possess a diamondback terrapin (Malaclemys terrapin) or their eggs unless the person is authorized to do so under a permit issued under Chapter 69, Subchapter J of this title (relating to Scientific, Educational, and Zoological Permits);

(11) for any person to take or kill shell-bearing mollusks, hermit crabs, starfish, or sea urchins from November 1 through April 30 within the following boundary: the bay and pass sides of South Padre Island from the East end of the north jetty at Brazos Santiago Pass to the West end of West Marisol drive in the town of South Padre Island, out 1,000 yards from the mean high-tide line, and bounded to the south by the centerline of the Brazos Santiago Pass;

(12) for any person to take, kill, or possess more than 15 univalve snails (all species), to include no more than two of each of the following species: lightening whelk, horse conch, Florida fighting conch, pear whelk, banded tulip, and Florida rocksnail; or

(13) for any person to:

(A) purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006;

(B) use the same finfish tag for the purpose of tagging more than one finfish;

(C) use a finfish tag in the name of another person;

(D) use a tag on a finfish for which another tag is specifically required;

(E) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(F) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or saltwater stamp holder;

(G) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or saltwater stamp holder;

(H) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(I) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(h) Harvest Log.

(1) The provisions of this subsection apply to any person in possession of a license lawfully purchased by any means other than through an automated point-of-sale system.

(2) A person who takes a red drum in excess of the maximum length limit shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(i) Alternative Licensing System.

(1) The requirements of this title that require the attachment of license tags to wildlife resources do not apply to any person in lawful possession of a license that was sold by the department without tags for red drum. A properly executed wildlife resource document must accompany any red drum in excess of maximum size limits until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(2) The provisions of this section do not exempt any person from any provision of this subchapter that requires or prescribes the use of a wildlife resource document.

(j) No person may leave a body of water listed in this subsection while in possession of a live nongame fish:

(1) the Red River below Lake Texoma downstream to the Texas/Arkansas border;

(2) Big Cypress Bayou downstream of Ferrell's Bridge Dam on Lake O' the Pines, including the Texas waters of Caddo Lake; and

(3) the Sulphur River downstream of the Lake Wright Patman dam to the Texas/Arkansas border.

(k) A person who leaves a water body listed in this subsection while in possession of a harmful or potentially harmful species listed in §57.111 of this title (relating to Definitions) that is invisible to the unaided human eye is not in violation of §57.112 of this title (relating to General Rules), provided that:

(1) all live wells, bilges, and other similar receptacles and systems that are capable of retaining or holding water as a consequence of being immersed in a water body have been drained prior to the use of a public roadway; or

(2) the person is travelling on a public roadway via the most direct route to another access point located on the same body of water.

(3) This subsection applies to the following bodies of water:

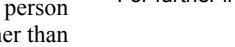
(A) the Red River from the I-44 bridge in Wichita County to the Texas/Arkansas border, including the Texas waters of Lake Texoma; and

(B) Lake Lavon.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2012.

TRD-201202147
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 16, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 389-4775



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.4, §1.5

The Texas Department of Transportation (department) adopts amendments to §1.4, Public Access to Commission Meetings, and §1.5, Public Hearings, both concerning public comment. The amendments to §1.4 are adopted without changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 666) and will not be republished. The amendments to §1.5 are adopted with changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 666).

EXPLANATION OF PROPOSED AMENDMENTS

S.B. No. 1420, 82nd Legislature, Regular Session, 2011, the department's sunset bill, amended Transportation Code, §201.802(a), to require the Texas Transportation Commission (commission) to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the department, rather than under the jurisdiction of the commission, as required before the amendment. The commission previously implemented the policies that were required under the previous statute. This rule amends the current rules to clarify that the commission will hear public comment on an issue within the jurisdiction of the department. The change will have little, if any, effect on the commission's operations. The commission is ultimately responsible for the operation of the department and for the related policy-making decisions; therefore, the jurisdiction of the commission includes all of the matters that are within the jurisdiction of the department.

Amendments to §1.4 change the word "commission" to "department" in subsections (c)(2) and (d)(1) as required by the statutory change. The change to subsection (c)(2) authorizes the chair to place an item on a commission meeting agenda if the chair determines that the proposed item is within the jurisdiction of the department and concerns a matter with sufficient public interest to justify its placement on the agenda. The change to subsection (d)(1) provides that at each regular business meeting after consideration of the posted agenda, the commission will receive public comment on any other matter that is under the jurisdiction of the department.

Amendments to §1.5 change the word "commission" to "department" in subsection (a)(8). The change authorizes the commission to hold public hearings to accept public comment on any issue under the jurisdiction of the department if acceptance of the public comment is required by law or considered appropriate by the commission.

After the publication of these proposed rules, the department determined that additional non-substantive changes to §1.5 are necessary to provide accurate statutory and rule citations within the section. Amendments to §1.5(a)(2) provide a reference to the specific statutory authority for a Gulf Intracoastal Waterway (GIWW) hearing by changing the citation from Transportation Code, Chapter 51, to Transportation Code, §51.006, and add a cross-reference to Chapter 2 of the department rules which apply to the holding of a GIWW hearing. Amendments to §1.5(a)(3), which concerns hearings relating to proposed transportation projects, add a cross-reference to Chapter 2 of the department rules to correct inaccuracies in the references to rule sections that were caused by the recent reorganization of that chapter.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, §201.802.

§1.5. Public Hearings.

(a) Subject of hearings. The commission may hold public hearings to:

(1) consider the adoption of rules, in accordance with the Administrative Procedure Act, Government Code, Chapter 2001;

(2) receive evidence and testimony concerning the desirability of acquiring dredge material disposal sites and of any widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, in accordance with Transportation Code, §51.006 and Chapter 2 of this title (relating to Environmental Review of Transportation Projects);

(3) provide for public input regarding the design, schematic layout, and environmental impact of transportation projects, in accordance with Transportation Code, §203.021, and Chapter 2 of this title;

(4) consider maximum prima facie speed limits on highways in the state highway system that are near public or private elementary or secondary schools or institutions of higher education, in accordance with Transportation Code, §545.357;

(5) annually receive public input on the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions, in accordance with Transportation Code, §201.602;

(6) receive comments from interested persons prior to converting a segment of the non-tolled state highway system to a toll project under Transportation Code, §228.203;

(7) receive comments from interested parties prior to approving any financial assistance under Transportation Code, §21.111, relating to aviation facilities development; and

(8) provide, when deemed appropriate by the commission or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the department.

(b) Authorized representative. The executive director or an employee of the department designated by the executive director may conduct public hearings held under subsection (a)(1), (3), (7), and (8) of this section.

(c) Conduct and decorum. Public hearings will be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and will be governed by the following guidelines.

(1) Questioning of those making presentations will be reserved to commissioners, the executive director, or, if applicable, the presiding officer.

(2) Organizations, associations, or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a public hearing must leave the hearing room if ordered to do so by the chair or the presiding officer.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(d) Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a hearing to be held by the commission may contact the office of the secretary to the commission in Austin. In the case of a hearing to be conducted by the department, those persons may contact the public affairs officer whose address and telephone number appear in the public notice for that hearing. Requests should be made at least two days before the hearing. The department will make every reasonable effort to accommodate these needs.

(e) Language accommodation. For a hearing held in an area with a substantial Spanish speaking population, the department will provide:

(1) notice of the hearing in both English and Spanish; and

(2) upon request, Spanish translation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202166
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 17, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 463-8683

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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

The Texas Department of Transportation (department) adopts amendments to §10.6, concerning Conflict of Interest, and §10.102, concerning Consequences of Violation. The amendments to §10.6 and §10.102 are adopted with changes to the proposed text as published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 668).

EXPLANATION OF ADOPTED AMENDMENTS

The department is adopting these amendments to expand the definition of conflict of interest to include revolving door restrictions for certain former upper-level employees and to add additional consequences to the current sanction provisions for violating the new prohibitions.

Amendments to §10.6 expand the definition of conflict of interest to include certain activities that former upper-level department employees may perform on behalf of their new employers. The rule imposes on certain former upper-level employees of the department a one-year ban that prohibits them from soliciting business from the department or attempting to influence the Texas Transportation Commission (commission) on behalf of a business entity. The ban does not apply for interim positions and does not apply to personal communication with the department or commission unless the individual attempts to solicit business or influence a decision on behalf of the current employer. Subsection (b)(2) prohibits all former employees whose last salary was at or above the level of the state's Salary Group A17 from working for a business entity on any matter that they worked on while employed by the department. Subsection (b)(2) is similar to the prohibition in Government Code, §572.054(b), which is subject to statutory interpretation by the Texas Ethics Commission. The department will follow the Texas Ethics Commission's opinions related to that statutory provision in making its determinations under subsection (b)(3). Subsection (e) provides a method for a former employee or entity that is subject to subsection (b) to ask for a determination of whether a conflict of interest would exist in a specified situation. The department will respond in writing to a proper request. Subsection (f) makes subsection (b)(1) applicable only to employees who leave the department on or after the effective date of these rules.

Appeals would be handled through existing appeals processes. A disqualification could be appealed by the filing of a protest, denial of payment could be appealed by the filing of a contract claim, and regular sanctions will be handled through the sanction appeal process.

The amendments to §10.6 are needed in order to provide a fair and unbiased contracting system and to ensure high standards of ethics and fairness in the administration of the department's programs.

Amendments to §10.102 allow the department to impose non-sanction consequences for entities whose employees violate the new provisions of §10.6 under a contract with the department. In addition to possible sanctions, the department may disqualify an entity from participating in the contract or it may refuse to pay the entity for any work performed by the former employee under the contract. This amendment is intended to deter violations of the revolving door restrictions and to provide the department with an appropriate remedy should a violation occur. Having a former department employee on staff does not, in itself, constitute a violation of these rules and will not automatically disqualify an entity from any contract or payment. The department will not disqualify an entity or refuse payment if the entity was properly acting in reliance on a written determination issued by the department under §10.6(e).

COMMENTS

Comments on the proposed amendments were received from the American Council of Engineering Companies of Texas (ACEC) and from an individual.

Comment: One commenter recommended that the words "at or" be deleted from §10.6(c)(1) because it would, in some instances, subject district engineers, division directors, office directors, and region directors to the same restrictions as members of the Administration.

Response: The department agrees that all positions at or above the level of district engineer, division director, office director, and region director should be subject to the same restrictions. Section 10.6(b)(1) has been revised to apply a one-year ban on certain contacts with the department to all former employees at or

above the level of district engineer, division director, office director, or region director.

Comment: One individual commented that these post-employment restrictions might discourage qualified professionals from accepting upper-level positions at the department.

Response: The department disagrees with this comment. The revolving door restrictions merely restate current law, and the time restriction on influencing the department does not prevent former employees from accepting private-sector employment, it bars only certain limited actions that could be detrimental to the public trust.

Comment: ACEC and one other commenter recommended that the changes be made to apply only to employees who separate from the agency after the effective date of the changes.

Response: The department agrees with this comment with regard to the one-year ban and has added §10.6(f) to make the ban applicable only to individuals who leave the department on or after the effective date of the rule. The department declines to add a grandfather clause for the general revolving door restrictions because those restrictions are not different than currently applicable state law.

Comment: ACEC commented that the department should not expand its rules beyond the law.

Response: The department disagrees with this comment. Any behavior that might reasonably give rise to a perception that favoritism plays a part in the award of department contracts is harmful to the integrity of the department's contracting system and serves to discourage qualified providers from participating. The rule's modest expansion of the provisions of the revolving door statutes to the higher-level administrative positions will address those concerns and will reinforce the department's commitment to integrity and ethical behavior.

Comment: ACEC commented that there is no basis for distinguishing between for-profit entities and government and nonprofit entities.

Response: The department distinguishes between for-profit entities and government and nonprofit entities because the legislature has done the same in the revolving door statute. (See the definitions of "person" and "business entity" in Government Code, §572.002(7) and (2), respectively.) A major purpose of revolving door laws is to preserve current government employees from being influenced, consciously or unconsciously, by the prospect of potential lucrative employment when making decisions that affect private entities. Entities that are not driven by profit motives would not have the same incentive to make employment offers to former department employees.

Comment: ACEC questioned whether the department is a regulatory agency under the revolving door statute and commented that the wording in §10.6(b)(3) conflicts with the revolving door statute.

Response: The department is a regulatory agency. The revolving door statute defines "regulatory agency" as any statewide executive agency having the power to adopt rules (Government Code, §572.002(8) and §572.004). The language in the rule closely tracks the language in the revolving door statute, and the department will follow the Texas Ethics Commission's opinions related to that statutory provision in making determinations under subsection (b)(3).

Comment: ACEC commented that the revolving door prohibitions should not be lifetime.

Response: The rule merely restates the lifetime prohibition found in the revolving door statute.

Additional change:

The department, in its discretion rather than in response to comments, determined that a change to the proposed rules is necessary to provide more certainty for persons affected by the rules. The change adds new subsection (e) to §10.6 which provides a method for a former department employee or entity that is subject to the rules to ask for a written determination of whether a conflict of interest would exist in a specified situation. The department will promptly respond to a written request that contains a concise explanation of the relevant facts of the situation. An accompanying change added in §10.102(b) prohibits the department from imposing sanctions on an entity on the basis of the entity violating the revolving door rules in a particular situation if the entity properly acted in reliance on a written determination of the department provided under §10.6(e).

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.6

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Government Code, §572.054.

§10.6. Conflict of Interest.

(a) For the purposes of this chapter, a conflict of interest is a circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, or a familial or domestic living relationship between a department employee and an employee of the entity, and because of which:

(1) the entity's objectivity in performing the scope of work sought by the department is or might be affected; or

(2) the entity's performance of services on behalf of the department or participation in an agreement with the department provides or may reasonably appear to provide an unfair competitive advantage to the entity or to a third party.

(b) A for-profit entity, including a sole proprietorship, has a conflict of interest if:

(1) an individual who held a position at or above the level of district engineer, division director, office director, or region director solicits business from or attempts to influence a decision of the commission or department on behalf of that entity within one year after the date of the individual's separation from the department; or

(2) a former department employee whose last salary from the department was at or above the minimum amount prescribed for salary group A17 of the state position classification salary schedule performs work on behalf of that entity regarding a specific investigation, application, request for ruling or determination, contract, claim, or judicial or other proceeding in which the former employee participated, whether through personal involvement or within the former employee's official responsibility, while employed by the department.

(c) Subsection (b)(1) of this section does not apply to a position that is designated as an interim position.

(d) For the purpose of subsection (b)(2) of this section, an individual participated in a matter if the individual made a decision or recommendation on the matter, approved, disapproved, or gave advice on the matter, conducted an investigation related to the matter, or took a similar action related to the matter.

(e) Before submitting a bid or undertaking some other interaction with the department, a for-profit entity or a former employee of the department to whom subsection (b) of this section applies may request from the department a determination of whether the interaction would constitute a conflict of interest under subsection (b) of this section. Such a request must be made in writing and must contain a concise explanation of the relevant facts. The department will not respond to a request under this subsection before consulting with the Office of General Counsel. The department will issue a written determination in response to a valid request made under this subsection as soon as practicable.

(f) Subsection (b)(1) of this section applies only to an individual whose employment with the department ends on or after the date that paragraph takes effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202167
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 17, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER C. REQUIRED CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

43 TAC §10.102

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Government Code, §572.054.

§10.102. Consequences of Violation.

(a) An entity's violation of §10.101 of this subchapter (relating to Required Conduct) is a ground for the imposition of sanctions, score reduction, or removal from precertification status under this chapter.

(b) In addition to any consequences imposed under subsection (a) of this section, the department may disqualify an entity with a conflict of interest described by §10.6(b) of this chapter (relating to Conflict of Interest) from participating in a contract to which the conflict applies, or may deny payment for work performed by the former department employee under the contract. The department may not disqualify or deny payment to an entity under this subsection on the basis of facts if the department has issued to the entity a written determination under §10.6 of this chapter that those same facts do not constitute a conflict of interest.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2012.

TRD-201202168
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: May 17, 2012
Proposal publication date: February 10, 2012
For further information, please call: (512) 463-8683

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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

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration. Chapter 82 consists of §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; and §82.3, concerning Request for Criminal History Evaluation Letter.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201202219
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 1, 2012

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation. Chapter 1 consists of Subchapter B, which contains §1.201, concerning Interpretations and Advisory Letters.

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission will accept comments for 31 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting this rule continue to exist.

The Office of Consumer Credit Commissioner, which administers this rule, believes that the reasons for adopting the rule contained in this chapter continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rule as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-201202218
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: May 1, 2012

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for re-adoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 150, Representation of Parties Before the Agency--Qualifications for Representatives.

§150.1. Minimum Standards of Practice for an Attorney.

§150.2. Qualification and Authorization of Attorney To Practice before the Commission.

§150.3. Representatives: Written Authorization Required.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, re-adopted, or re-adopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, re-adopted, or re-adopted with amendments must be submitted by 5:00 p.m. CST, June 11, 2012. Comments may be submitted by email at rulereviewcomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Com-

pensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201202212
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 30, 2012

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Adopted Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 53, concerning Municipal Securities, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 719).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 53 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202251
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 55, concerning Child Support Enforcement, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 719).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 55 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202263
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 59, concerning Collections, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 719).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that, the reasons for adopting the rules in Chapter 59, §59.1 and §59.2 continue to exist and these sections are readopted without changes in accordance with the requirements of Government Code §2001.039. The OAG finds that the reasons for adopting §59.3, relating to Reporting Delinquent Obligations Owed to the State, no longer exist, because of the statutory repeal of the former Government Code §2107.005. The OAG will subsequently be repealing §59.3 in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202253
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 60, concerning Texas Crime Victim Services Grant Programs, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 720).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 60 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202254
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 61, concerning Crime Victims' Compensation, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these

rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 720).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 61 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202255
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 62, concerning Sexual Assault Prevention and Crisis Services, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 720).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 62 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202256
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 64, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 720).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 64 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202257
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 65, concerning Standards of Operation for Local Children's Advocacy Centers, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 721).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 65 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202258
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 66, concerning Family Trust Fund Disbursement Procedures, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 721).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 66 no longer exist and will subsequently be repealing this chapter in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202259
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 68, concerning Negotiation and Mediation of Certain Contract Disputes, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 721).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 68 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202260
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 69, Subchapter A, concerning Procedures for Vendor Protests of Procurements, and Subchapter B, concerning Historically Underutilized Business Program, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 721).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 69, Subchapters A and B continue to exist, but amendments to the rules are needed. The OAG readopts these subchapters in accordance with the requirements of Government Code §2001.039 and will subsequently be revising the rules in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202261
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

♦ ♦ ♦

The Office of the Attorney General ("OAG") has completed its Rule Review of Texas Administrative Code, Title 1, Part 3, Chapter 69, Subchapter C, concerning Management of Vehicles, pursuant to Government Code §2001.039. The OAG published its Notice of Intent to Review these rules in the February 10, 2012, issue of the *Texas Register* (37 TexReg 722).

The review assessed whether the reasons for adopting the rules continue to exist. No comments were received regarding this review.

As a result of the review, the OAG finds that the reasons for adopting the rules in Chapter 69, Subchapter C continue to exist and readopts this subchapter without changes in accordance with the requirements of Government Code §2001.039. The rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201202262
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2012

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General Land Office

Title 31, Part 1

Following the notice of intent to review published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2879), the Texas General Land Office (GLO) has reviewed and considered for readoption, revision, or repeal, of the following chapters:

Chapter 1. Executive Administration

Chapter 2. Rules of Practice and Procedure

Chapter 8. Gas Marketing Program

Chapter 9. Exploration and Leasing of State Oil and Gas

Chapter 10. Exploration and Development of State Minerals Other Than Oil and Gas

Chapter 14. Relationship Between Agency and Private Organizations

Chapter 16. Coastal Protection

Chapter 19. Oil Spill Prevention and Response

Chapter 20. Natural Resources Damage Assessment

The rules reviewed are found in Title 31, Part 1 of the Texas Administrative Code.

No comments were received on the proposed rule review.

The review of Chapters 1, 2, 8 - 10, 14, 16, 19 and 20, is filed in accordance with the GLO's rule review plan published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1365).

The GLO considered, among other things, whether the reasons for adoption of these rules continue to exist. During its review, the GLO determined that the agency rulemaking authority remains in effect and the reasons for the adoption of these rules continues to exist. Therefore, Chapters 1, 2, 8 - 10, 14, 16, 19 and 20, are readopted *without changes*. This completes the GLO's rule review.

TRD-201202275
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: May 2, 2012

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board (Board) adopts the review of Chapter 192, Office-Based Anesthesia Services, §§192.1 - 192.6, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the March 9, 2012, issue of the *Texas Register* (37 TexReg 1788).

Elsewhere in this issue of the *Texas Register,* the Board contemporaneously adopts amendments to §192.1 and §192.2.

The Board received comments from the Texas Society of Anesthesiologists (TSA). TSA made comments based on the chapter going through rule review, as opposed to direct comments on the proposed

amendments. Comments included amending definitions of anesthesia and anesthesia services; replacing references to dangerous drugs with narcotic drugs; adding definition of tumescent anesthesia; and including rules to regulate the administration of local anesthesia when given in concentrations exceeding 7mg/kg. The Board agreed with the comments from TSA and intends to further amend §192.1 based on those comments at its meetings in June and August of 2012. Regarding §192.2, comments included amendment requirements for level I - III services to better ensure patient safety. The Board agreed with the comments from TSA and intends to further amend §192.2 based on those comments at its meetings in June and August of 2012.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 192, Office-Based Anesthesia Services.

TRD-201202134
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: April 25, 2012

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) has completed the review of Chapter 21, concerning Interconnection Agreements for Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules,* as noticed in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9355). The text of the rules may be found in the Texas Administrative Code under Title 16, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 39950, *Agency Review of Chapter 21 - Interconnection Agreements for Telecommunications Service Providers Pursuant to Texas Government Code §2001.039,* is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review includes an assessment of whether the reasons for adopting the rules continue to exist. The commission requested specific comments from interested persons on whether the reasons for adopting each section in Chapter 21 continue to exist. The commission's Chapter 21 rules (Texas Administrative Code, Title 16, Part 2) establish procedures for approving interconnection agreements (ICAs) and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252.

The commission finds that the reasons for adopting Chapter 21, Interconnection Agreements for Telecommunications Service Providers, continue to exist and readopts these rules without amendments. Interconnection agreements continue to be important in governing the relationship between telecommunications providers, and the commission continues to have a role in adjudicating disputes relating to such agreements.

The commission received comments from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), and GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon). Additionally, Texas Statewide Telephone Cooperative, Inc. (TSTCI) filed reply comments to the comments of AT&T and Verizon. While there were some suggestions for modifications to particular Chapter 21 rules, no party questioned the continued need for the rules. The parties' comments are summarized in order by rule section number and the commission response addressing these comments is set forth at the end of the summaries.

Subchapter A. General Provisions and Definitions

§21.5. Representative Appearances.

Section 21.5 permits any person to appear before the commission or in a hearing in person or through an authorized representative. The presiding officer may require a representative to provide proof of authority to appear on behalf of another person. Section 21.5 requires an authorized representative to specify the particular persons or classes of persons whom the representative is representing in the proceeding.

AT&T suggested that because FTA proceedings involved complex legal as well as technical issues, which require a participant to be able to interpret rules and decisions rendered by the Federal Communications Commission (FCC) and the commission as well as court interpretation of such rules and decisions, an authorized representative should be limited to an officer or senior management level employee of the represented party; an attorney licensed to practice in the State of Texas; or an attorney licensed to practice in one of the fifty states, if the party is also represented by co-counsel admitted to practice in Texas. AT&T also requested that the second sentence in §21.5(a) be revised to begin with the phrase, "On request of the presiding officer or any party to the proceeding" so that the amended sentence would read "On request of the presiding officer or any party to the proceeding, the presiding officer may require a representative to submit proof of authority to appear on behalf of another person." Additionally, AT&T requested that the commission amend Chapter 21 to bring the commission's rules in line with the rules of the State Bar of Texas regarding the prohibition of the unauthorized practice of law. AT&T contended that the Texas Government Code definition of the practice of law is not exclusive and the practice of law embraces, in general, all advice to clients and all action taken for them in matters connected with the law.

TSTCI responded that it does not agree with AT&T's proposed revisions to §21.5 to restrict who may serve as an authorized representative. TSTCI stated that small incumbent local exchange companies (ILECS) typically rely a great deal on their consultants, certified public accountants, and engineers to represent them in commission proceedings, including interconnection proceedings. TSTCI contended that AT&T's proposal would cause a hardship to TSTCI member companies and other small ILECs in the state by severely restricting the options available to small ILECs and driving up their costs of participation in commission proceedings. TSTCI stated that AT&T proposed a similar rule revision in commission Project Number 34575 when the Chapter 21 rules were reviewed in 2007. In that project, the commission did not adopt AT&T's suggestions to restrict a company's options for representation before the commission in Chapter 21 proceedings. TSTCI also stated there was an attempt in the 79th legislative session to enact a similar provision restricting representation before the commission to licensed attorneys in House Bill 1779, the sunset bill, but that version did not pass. Instead, the 79th Legislature enacted Senate Bill 409, a different sunset bill that did not contain any language restricting representation at the commission. TSTCI contends that circumstances have not changed since that time.

§21.7(a), Standards of conduct for parties.

Section 21.7(a) delineates the standards for conduct for parties appearing in any Chapter 21 proceeding and provides for sanctions if the standards are violated.

AT&T commented that §21.7(a) should apply the standards imposed upon attorneys under the Texas Disciplinary Rules of Professional Con-

duct to all representatives making an appearance in any proceeding to ensure fairness in adjudicatory proceedings, by ensuring that consistent standards apply to all representatives appearing before the commission.

Subchapter B. Pleadings, Documents, and Other Materials

§21.31(c), Number of items to be filed.

Section 21.31(c) lists the number of copies that are required to be filed for various types of pleadings and documents, unless otherwise provided by Chapter 21 or by order of the presiding officer.

AT&T proposed that the commission's rules provide an option for parties to file only an electronic copy of pleadings in accordance with commission-standard formatting, instead of paper copies, in order to promote efficiency and avoid administrative burdens on parties and the commission. AT&T argued that the administrative costs and burdens to finalize and copy voluminous documents are significant. Moreover, AT&T stated, parties have moved towards agreements for electronic service of filings. Filing and serving a single copy in an electronic format would better ensure consistency in the copy filed and served on parties. Should the commission continue to require hard copies, AT&T alternatively recommended a reduction to three copies for the number of hard copies for applications required under §§21.97, 21.101, and 21.103. AT&T also urged the commission to reduce the number of copies required under §21.31(c)(2), (3), (4), and (7) from ten to four copies. For hearings presided over by commissioners, AT&T recommended a reduction from 19 to ten copies for testimony and briefs. For final approved interconnection agreements, AT&T did not propose a change from the current requirement in §21.31(c)(6) to file two copies.

§21.31(g), Filing a copy or facsimile copy in lieu of an original.

Section 21.31(g) permits a copy of an original document or pleading, including a facsimile copy, to be filed in lieu of the original so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

AT&T recommended that §21.31 be amended to permit a party to file a copy of an original document or pleading electronically, in accordance with commission-standard formatting, such as a portable document file (pdf), so long as the filing party or attorney maintains the original for inspection by the commission or any party to the proceeding.

§21.33(e), Signature.

Section 21.33(e) requires that every pleading and document shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, facsimile number, email address, and if the signing person is an attorney licensed in Texas, the attorney's State bar number.

AT&T stated that most states now accept electronic signatures and even have enacted uniform electronic transactions act laws, including Texas.

Section 21.35(b), Methods of service.

Section 21.35(b) describes the methods of service on a party for pleadings and documents. Service may be made by delivery in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; by registered mail; or by facsimile transmission.

AT&T requested that the commission amend §21.35(b) to include service by electronic mail. AT&T stated that parties currently often agree to allow service through electronic means. AT&T stated that while §21.35(b)(4) makes explicit reference to service via electronic mail, this option is not explicitly included in §21.35(b).

Subchapter C. Preliminary Issues, Orders, and Proceedings

§21.75. Motions for Clarification and Motions for Reconsideration.

Section 21.75(a)(1) requires that a motion for clarification be filed within ten working days of the issuance of the presiding officer's decision or order. Responses to a motion for clarification shall be filed within five working days of the filing of the motion. Section 21.75(b)(2) requires that a motion for reconsideration be filed within 20 days of the issuance of the order under consideration. Responses to a motion for reconsideration must be filed within ten working days of the filing of the motion.

AT&T requested that the commission clarify in §21.75(a)(2) that the date of issuance of the order is the date on which the presiding officer signed the order. AT&T stated that there have been numerous occasions where an order was signed one day and filed on another, which can lead to confusion as to the due date for an appeal.

Subchapter D. Dispute Resolution

§21.101. Approval of Amendments to Existing Interconnection Agreements.

Section 21.101(i) sets forth the filing requirements for an approved amended interconnection agreement.

AT&T requested that the commission eliminate the requirement in §21.101(i) that: "If the presiding officer approves the amendments to the agreement, the parties to the agreement shall file two copies, one unbound, of the complete amended interconnection agreement with the commission's filing clerk within ten working days of the presiding officer's decision. The copies shall be clearly marked with the control number assigned to the proceeding and the language 'Amended interconnection agreement as approved (or modified and approved) on (insert date).'"

AT&T commented that of the 22 states where it currently operates, only Texas mandates the filing of an amended fully conformed agreement, imposing great administrative and cost burdens for copying and filing often voluminous conformed agreements. AT&T stated that it maintains a listing of all ICAs and amendments on its website, along with a link to the commission's website, to facilitate public ease of locating the agreements. AT&T stated that it is not requesting that the other requirements of §21.101(i) be removed, because these requirements provide important public notice of amendment to the ICAs.

Verizon also requested that the commission amend §21.101(i) to remove the requirement that parties file two hard copies of a complete amended ICA every time an amendment is approved. Verizon stated this requirement is time-consuming, wastes resources, and is unnecessarily burdensome given the frequency of filings. Verizon proposed that subsection (a) of the rule should be amended to add new paragraph (5) that would require an applicant seeking approval of an ICA amendment to include in the application the docket number in which the original ICA was approved, each docket number in which other amendments to the ICA were approved, and the dates of approval. Alternatively, Verizon recommended that the commission permit parties to send a complete copy of the approved, amended ICA via electronic mail. Verizon asserted that either of its proposals would avoid the need for carriers to file, and for commission staff to process and review, hundreds of pages of amendments each time an application to amend an ICA is approved.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

Section 21.103(a) requires a local exchange carrier (LEC) to make available any interconnection, service, or network element provided under a previously approved ICA to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the ICA. The filing and processing are also delineated in §21.103(a) and (b).

AT&T suggested several modifications to these subsections. AT&T contended that §21.103 needs to be amended to bring it into conformity with current federal law, which permits carriers to opt into entire ICAs only. In addition, AT&T stated that the FCC rules require that approved ICAs should be made available for opt-in for a reasonable period of time and, therefore §21.103(a) should be amended to contain a reasonable time limitation. Furthermore, AT&T argued that, in conformity with current law and industry practice, the commission should clarify that a carrier may not replace a valid existing ICA with another ICA under Federal Telecommunications Act §252(i).

AT&T also requested that the commission adopt a most favored nation (MFN) short form for MFNs into non-successor ICAs. AT&T stated that the MFN Short Form into successor ICAs worked extremely well and streamlined the process in prior Docket Number 28821. AT&T asserted that Texas is the only state in AT&T's 22 state operating area without an MFN Short Form, and implementation of such a form will eliminate administrative and cost burdens associated with conforming the MFN with approved amendments. Under AT&T's proposal, the MFN Short Form would be executed by both parties and placed on top of the underlying ICA and approved ICAs. All documents would be filed with commission, including a joint petition, AT&T's affidavit, and a carrier's affidavit. The joint petition would identify the approved amendments. AT&T attached a draft of its proposed MFN Short Form for MFNs into non-successor agreements to its comments.

Subchapter E. Post-Interconnection Agreement Dispute Resolution

§21.129. Request for Interim Ruling Pending Dispute Resolution.

Section 21.129 establishes the procedural requirements applicable to a request by a party for interim ruling pending dispute resolution when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of any service, functionality, or network element.

AT&T commented that §21.129 should be amended to state that a party may not use the interim ruling process to circumvent or avoid pay-and-dispute or escrow provisions contained in the ICA. AT&T also requested another amendment to §21.129 to state that prior to seeking interim relief per §21.129 for billing disputes, a party must first raise any such dispute according to the terms of the ICA.

Commission Response

The commission appreciates the thoughtful comments on this chapter. Some of the amendments suggested in the comments might improve these procedural rules, but would require further consideration, including additional notice and public input, before adoption. In addition, some of the suggestions affect rules for which there are similar rules in the commission's Chapter 22, Procedural Rules. In order to maintain uniformity of practice before the commission, it may be appropriate to amend both sets of rules at the same time. The commission will consider initiating a separate proceeding (or proceedings) to amend this chapter and similar provisions of its other procedural rules, based on the benefits that could be derived from the amendments and other relevant factors.

The commission has completed the review of Chapter 21 pursuant to Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter 21 continue to exist. Therefore, the commission readopts Chapter 21, Interconnection Agreements for Telecommunications Service Providers, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (West 2007 & Supp. 2011), which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission; and Texas Government Code §2001.039 (West 2008), which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act §14.002 and §14.052; and Texas Government Code §2001.039.

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

§21.1. Purpose and Scope.

§21.3. Definitions.

§21.5. Representative Appearances.

§21.7. Standards of Conduct.

§21.9. Computation of Time.

§21.11. Suspension of Rules and Good Cause Exceptions.

SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS

§21.31. Filing of Pleadings, Documents, and Other Materials.

§21.33. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

§21.35. Service of Pleadings and Documents.

§21.37. Examination and Correction of Pleadings and Documents.

§21.39. Amended Pleadings.

§21.41. Motions.

SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS

§21.61. Threshold Issues and Certification of Issues to the Commission.

§21.63. Interim Issues and Orders.

§21.65. Interlocutory Appeals.

§21.67. Dismissal of a Proceeding.

§21.69. Summary Decision.

§21.71. Sanctions.

§21.73. Consolidation of Dockets, Consolidation of Issues, and Joint Filings.

§21.75. Motions for Clarification and Motions for Reconsideration.

§21.77. Confidential Material.

SUBCHAPTER D. DISPUTE RESOLUTION.

§21.91. Mediation.

§21.93. Voluntary Alternative Dispute Resolution.

§21.95. Compulsory Arbitration.

§21.97. Approval of Negotiated Agreements.

§21.99. Approval of Arbitrated Agreements.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

§21.121. Purpose.

§21.123. Informal Settlement Conference.

§21.125. Formal Dispute Resolution Proceeding.

§21.127. Request for Expedited Ruling.

§21.129. Request for Interim Ruling Pending Dispute Resolution.

TRD-201202264
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2012

♦ ♦ ♦

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code, Chapter 27, concerning Rules for Administrative Services, pursuant to the Texas Government Code, Administrative Procedure Act (APA), §2001.039, *Agency Review of Existing Rules.* The notice of intention to review Chapter 27 was published in the December 30, 2011, issue of the *Texas Register* (36 TexReg 9356). Project Number 39951, *Agency Review of Chapter 27 - Rules for Administrative Services, Pursuant to Texas Government Code §2001.039* is assigned to this review proceeding. This concludes the review of Chapter 27 pursuant to APA §2001.039.

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission requested specific comments on whether the reason for adopting the administrative services rules in Chapter 27 continues to exist. The commission received no comments on the review of Chapter 27.

The commission has completed the review of the rules in Chapter 27 pursuant to APA §2001.039 and finds that the reason for adopting the rules in Chapter 27 continues to exist. The adoption of Chapter 27 complies with Texas Government Code §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the state; and Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning commission purchases that are consistent with the Texas Facilities Commission's rules on the same subject.

The commission readopts Chapter 27, Rules for Administrative Services, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 and §14.052 (West 2007 and Supp. 2011) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and pursuant to Texas Government Code §2001.039 (West 2008) which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Government Code §2001.039, Chapter 2155, Subchapter B, Chapter 2161 and Chapter 2260; PURA §14.002 and §14.052.

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

§27.31. Historically Underutilized Business Program.

SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

DIVISION 1. GENERAL

§27.61. Purpose.

§27.63. Applicability.

§27.65. Definitions.

§27.67. Prerequisites to Suit.

§27.69. Sovereign Immunity.

DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

§27.81. Notice of Claim of Breach of Contract.

§27.83. Agency Counterclaim.

§27.85. Request for Voluntary Disclosure of Additional Information.

§27.87. Duty to Negotiate.

§27.89. Timetable.

§27.91. Conduct of Negotiation.

§27.93. Settlement Approval Procedures.

§27.95. Settlement Agreement.

§27.97. Costs of Negotiation.

§27.99. Request for Contested Case Hearing.

DIVISION 3. MEDIATION OF CONTRACT DISPUTES

§27.111. Mediation Timetable.

§27.113. Conduct of Mediation.

§27.115. Agreement to Mediate.

§27.117. Qualifications and Immunity of the Mediator.

§27.119. Confidentiality of Mediation and Final Settlement Agreement.

§27.121. Costs of Mediation.

§27.123. Settlement Approval Procedures.

§27.125. Initial Settlement Agreement.

§27.127. Final Settlement Agreement.

§27.129. Referral to the State Office of Administrative Hearings (SOAH).

DIVISION 4. ASSISTED NEGOTIATION PROCESSES

§27.141. Assisted Negotiation Processes.

§27.143. Factors Supporting the Use of Assisted Negotiation Processes.

§27.145. Use of Assisted Negotiation Processes.

SUBCHAPTER D. VENDOR PROTEST

§27.161. Procedures for Resolving Vendor Protests.

TRD-201202266
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2012

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the re-adoption of Texas Administrative Code, Title 43, Part 1, Chapter 5, Finance; Chapter 15, Financing and Construction of Transportation Projects; and Chapter 27, Toll Projects.

This review and re-adoption have been conducted in accordance with Government Code, §2001.039. The department has reviewed these rules and received no comments on the proposed rule review, which was published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 723). The Texas Transportation Commission has determined that the reasons for adopting the specified rules continue to exist.

This concludes the review of Chapters 5, 15, and 27.

TRD-201202169
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: April 27, 2012

♦ ♦ ♦

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: 1 TAC §95.503(1)(E)

Ending Noise Words

The following words and abbreviations indicate the existence or nature of an entity. These business endings will be ignored in a UCC search.

- AND
- ASSN
- ASSOC
- ASSOCIATION
- BUSINESS TRUST
- CHARTERED
- CHTD
- CO
- CO-OP
- COMPANY
- COOPERATIVE
- CORP
- CORPORATION
- CREDIT UNION
- CU
- FCU
- FEDERAL CREDIT UNION
- FEDERAL SAVINGS BANK
- FSB
- GENERAL PARTNERSHIP
- GMBH
- GP
- INC
- INCORPORATED
- JOINT STOCK COMPANY
- JOINT VENTURE
- JSC
- JV
- LC
- LIMITED
- LIMITED COMPANY
- LIMITED LIABILITY COMPANY
- LIMITED LIABILITY LIMITED PARTNERSHIP
- LIMITED LIABILITY PARTNERSHIP
- LIMITED PARTNERSHIP
- LLC
- LLLP
- LLP
- LP
- LTD
- LTD CO
- MD
- MDPA
- MEDICAL DOCTOR
- NA
- NATIONAL ASSOCIATION
- PA
- PARTNERSHIP
- PC
- PLC
- PLLC
- PROFESSIONAL ASSOCIATION
- PROFESSIONAL CORPORATION
- PROFESSIONAL LIMITED COMPANY
- PROFESSIONAL LIMITED LIABILITY COMPANY
- REGISTERED LIMITED LIABILITY PARTNERSHIP
- RLLP
- SA
- SAVINGS ASSOCIATION
- SSB
- TRUST

Figure: 1 TAC §95.503(1)(H)

First Name Equivalents

NAME	EQUIVALENT				
AL	ALAN	ALBERT	ALBERTE	ALEX	ALEXANDER
	ALFRED	ALLAN	ALLEN		
ALAN	AL	ALLAN	ALLEN		
ALBERT	AL	ALBERTE			
ALBERTE	AL	ALBERT			
ALEX	AL	ALEXANDER			
ALEXANDER	AL	ALEX			
ALFRED	AL				
ALLAN	AL	ALAN	ALLEN		
ALLEN	AL	ALAN	ALLAN		
ANDIE	ANDREW	ANDY			
ANDREW	ANDIE	ANDY			
ANDY	ANDIE	ANDREW			
ANTHONY	ANTONY	TONY			
ANTONY	ANTHONY	TONY			
ART	ARTHUR				
ARTHUR	ART				
BECKY	REBECCA	REBEKAH			
BEN	BENJAMIN	BENNIE	BENNY		
BENJAMIN	BEN	BENNIE	BENNY		
BENNIE	BEN	BENJAMIN	BENNY		
BENNY	BEN	BENJAMIN	BENNIE		
BERNARD	BERNIE				
BERNIE	BERNARD				
BILL	BILLIE	BILLY	WILL	WILLIAM	WILLIE
	WILLY	WM			
BILLIE	BILL	BILLY	WILL	WILLIAM	WILLIE
	WILLY	WM			
BILLY	BILL	BILLIE	WILL	WILLIAM	WILLIE
	WILLY	WM			
BOB	BOBBIE	BOBBY	ROB	ROBERT	
BOBBIE	BOB	BOBBY	ROB	ROBERT	
BOBBY	BOB	BOBBIE	ROB	ROBERT	
CATHARINE	CATHERINE	CATHLEEN	CATHY	KATHARINE	KATHERINE
	KATHLEEN	KATHY			
CATHERINE	CATHARINE	CATHLEEN	CATHY	KATHARINE	KATHERINE
	KATHLEEN	KATHY			
CATHLEEN	CATHARINE	CATHERINE	CATHY	KATHARINE	KATHERINE
	KATHLEEN	KATHY			
CATHY	CATHARINE	CATHERINE	CATHLEEN	KATHARINE	KATHERINE
	KATHLEEN	KATHY			
CHARLES	CHARLEY	CHARLIE	CHARLY	CHAS	CHUCK

NAME	EQUIVALENT				
CHARLEY	CHARLES	CHARLIE	CHARLY	CHAS	CHUCK
CHARLIE	CHARLES	CHARLEY	CHARLY	CHAS	CHUCK
CHARLY	CHARLES	CHARLEY	CHARLIE	CHAS	CHUCK
CHAS	CHARLES	CHARLEY	CHARLIE	CHARLY	CHUCK
CHRIS	CHRISTOPHER				
CHRISTOPHER	CHRIS				
CHUCK	CHARLES	CHARLEY	CHARLIE	CHARLY	CHAS
CLAY	CLAYTON				
CLAYTON	CLAY				
CLIFF	CLIFTON				
CLIFTON	CLIFF				
CURT	CURTIS				
CURTIS	CURT				
DAN	DANIEL	DANNY			
DANIEL	DAN	DANNY			
DANNY	DAN	DANIEL			
DAVE	DAVEY	DAVID	DAVIE		
DAVEY	DAVE	DAVID	DAVIE		
DAVID	DAVE	DAVEY	DAVIE		
DAVIE	DAVE	DAVEY	DAVID		
DICK	RICH	RICHARD	RICK	RICKEY	RICKY
DON	DONALD	DONNIE	DONNY		
DONALD	DON	DONNIE	DONNY		
DONNIE	DON	DONALD	DONNY		
DONNY	DON	DONALD	DONNIE		
DOUG	DOUGLAS				
DOUGLAS	DOUG				
ED	EDDIE	EDDY	EDWARD	EDWIN	
EDDIE	ED	EDDY	EDWARD	EDWIN	
EDDY	ED	EDDIE	EDWARD	EDWIN	
EDWARD	ED	EDDIE	EDDY	EDWIN	
EDWIN	ED	EDDIE	EDDY	EDWARD	
ERNEST	ERNIE				
ERNIE	ERNEST				
EUGENE	GENE				
FRED	FREDERIC	FREDERICK			
FREDERIC	FRED	FREDERICK			
FREDERICK	FRED	FREDERIC			
GENE	EUGENE				
GEO	GEORGE				
GEOFF	GEOFFREY	JEFF	JEFFERY	JEFFREY	
GEOFFREY	GEOFF	JEFF	JEFFERY	JEFFREY	
GEORGE	GEO				
GERALD	GERRY	JERRY			
GERRY	GERALD	JERRY			
HAL	HAROLD	HARRY			
HANK	HENRY				
HAROLD	HAL	HARRY			
HARRY	HAL	HAROLD			
HENRY	HANK				

NAME	EQUIVALENT				
HERB	HERBERT				
HERBERT	HERB				
JACK	JOHN	JOHNNIE	JOHNNY	JONATHAN	
JAMES	JAS	JIM	JIMMIE	JIMMY	
JAS	JAMES	JIM	JIMMIE	JIMMY	
JEFF	GEOFF	GEOFFREY	JEFFERY	JEFFREY	
JEFFERY	GEOFF	GEOFFREY	JEFF	JEFFREY	
JEFFREY	GEOFF	GEOFFREY	JEFF	JEFFERY	
JERRY	GERALD	GERRY			
JIM	JAMES	JAS	JIMMIE	JIMMY	
JIMMIE	JAMES	JAS	JIM	JIMMY	
JIMMY	JAMES	JAS	JIM	JIMMIE	
JOE	JOEY	JOSEPH			
JOEY	JOE	JOSEPH			
JOHN	JACK	JOHNNIE	JOHNNY	JONATHAN	
JOHNNIE	JACK	JOHN	JOHNNY	JONATHAN	
JOHNNY	JACK	JOHN	JOHNNIE	JONATHAN	
JONATHAN	JACK	JOHN	JOHNNIE	JOHNNY	
JOSEPH	JOE	JOEY			
JR	JUNIOR				
JUDI	JUDIE	JUDITH	JUDY		
JUDIE	JUDI	JUDITH	JUDY		
JUDITH	JUDI	JUDIE	JUDY		
JUDY	JUDI	JUDIE	JUDITH		
JUNIOR	JR				
KATHARINE	CATHARINE	CATHERINE	CATHLEEN	CATHY	KATHERINE
	KATHLEEN	KATHY			
KATHERINE	CATHARINE	CATHERINE	CATHLEEN	CATHY	KATHARINE
	KATHLEEN	KATHY			
KATHLEEN	CATHARINE	CATHERINE	CATHLEEN	CATHY	KATHARINE
	KATHERINE	KATHY			
KATHY	CATHARINE	CATHERINE	CATHLEEN	CATHY	KATHARINE
	KATHERINE	KATHLEEN			
KEN	KENNETH	KENNIE	KENNY		
KENNETH	KEN	KENNIE	KENNY		
KENNIE	KEN	KENNETH	KENNY		
KENNY	KEN	KENNETH	KENNIE		
LARRY	LAWRENCE				
LAWRENCE	LARRY				
LEN	LENNIE	LENNY	LEONARD		
LENNIE	LEN	LENNY	LEONARD		
LENNY	LEN	LENNIE	LEONARD		
LEONARD	LEN	LENNIE	LENNY		
LEWIS	LOU	LOUIS			
LOU	LEWIS	LOUIS			
LOUIS	LEWIS	LOU			
MADGE	MAGGIE	MARGARET	MEG	PEG	PEGGY
MAGGIE	MADGE	MARGARET	MEG	PEG	PEGGY
MARGARET	MADGE	MAGGIE	MEG	PEG	PEGGY
MATT	MATTHEW				

NAME	EQUIVALENT				
MATTHEW	MATT				
MEG	MADGE	MAGGIE	MARGARET	PEG	PEGGY
MICHAEL	MICKEY	MICKY	MIKE		
MICKEY	MICHAEL	MICKY	MIKE		
MICKY	MICHAEL	MICKEY	MIKE		
MIKE	MICHAEL	MICKEY	MICKY		
NAT	NATE	NATHAN	NATHANIEL		
NATE	NAT	NATHAN	NATHANIEL		
NATHAN	NAT	NATE	NATHANIEL		
NATHANIEL	NAT	NATE	NATHAN		
NICHOLAS	NICK	NICOLAS			
NICK	NICHOLAS	NICOLAS			
NICOLAS	NICHOLAS	NICK			
PAM	PAMELA				
PAMELA	PAM				
PAT	PATRICIA	PATRICK	PATSY	PATTI	PATTIE
	PATTY	TRICIA	TRISH	TRISHA	
PATRICIA	PAT	PATRICK	PATSY	PATTI	PATTIE
	PATTY	TRICIA	TRISH	TRISHA	
PATRICK	PAT	PATRICIA	PATSY	PATTI	PATTIE
	PATTY	TRICIA	TRISH	TRISHA	
PATSY	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTIE	PATTY	TRICIA	TRISH	TRISHA
PATTI	PAT	PATRICIA	PATRICK	PATSY	PATTIE
	PATTY	TRICIA	TRISH	TRISHA	
PATTIE	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTY	TRICIA	TRISH	TRISHA	
PATTY	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTIE	TRICIA	TRISH	TRISHA	
PEG	MADGE	MAGGIE	MARGARET	MEG	PEGGY
PEGGY	MADGE	MAGGIE	MARGARET	MEG	PEG
PETE	PETER				
PETER	PETE				
PHIL	PHILIP	PHILLIP			
PHILIP	PHIL	PHILLIP			
PHILLIP	PHIL	PHILIP			
RANDAL	RANDALL	RANDY			
RANDALL	RANDAL	RANDY			
RANDY	RANDAL	RANDALL			
RAY	RAYBURN	RAYMOND	RAYMUND		
RAYBURN	RAY	RAYMOND	RAYMUND		
RAYMOND	RAY	RAYBURN	RAYMUND		
RAYMUND	RAY	RAYBURN	RAYMOND		
REBECCA	BECKY	REBEKAH			
REBEKAH	BECKY	REBECCA			
RICH	DICK	RICHARD	RICK	RICKEY	RICKY
RICHARD	DICK	RICH	RICK	RICKEY	RICKY
RICK	DICK	RICH	RICHARD	RICKEY	RICKY
RICKEY	DICK	RICH	RICHARD	RICK	RICKY
RICKY	DICK	RICH	RICHARD	RICK	RICKEY

NAME	EQUIVALENT				
ROB	BOB	BOBBIE	BOBBY	ROBERT	
ROBERT	BOB	BOBBIE	BOBBY	ROB	
RON	RONALD	RONNIE	RONNY		
RONALD	RON	RONNIE	RONNY		
RONNIE	RON	RONALD	RONNY		
RONNY	RON	RONALD	RONNIE		
RUTH	RUTHI	RUTHIE			
RUTHI	RUTH	RUTHIE			
RUTHIE	RUTH	RUTHI			
SAM	SAMMY	SAMUEL			
SAMMY	SAM	SAMUEL			
SAMUEL	SAM	SAMMY			
SANDI	SANDIE	SANDRA	SANDY		
SANDIE	SANDI	SANDRA	SANDY		
SANDRA	SANDI	SANDIE	SANDY		
SANDY	SANDI	SANDIE	SANDRA		
SENIOR	SR				
SID	SIDNEY				
SIDNEY	SID				
SR	SENIOR				
STEPHEN	STEVE	STEVEN			
STEVE	STEPHEN	STEVEN			
STEVEN	STEPHEN	STEVE			
SUE	SUSAN	SUSIE	SUZY		
SUSAN	SUE	SUSIE	SUZY		
SUSIE	SUE	SUSAN	SUZY		
SUZY	SUE	SUSAN	SUSIE		
TED	TEDDIE	TEDDY	THEO	THEODORE	
TEDDIE	TED	TEDDY	THEO	THEODORE	
TEDDY	TED	TEDDIE	THEO	THEODORE	
THEO	TED	TEDDIE	TEDDY	THEODORE	
THEODORE	TED	TEDDIE	TEDDY	THEO	
THOMAS	THOS	TOM	TOMMIE	TOMMY	
THOS	THOMAS	TOM	TOMMIE	TOMMY	
TIM	TIMOTHY				
TIMOTHY	TIM				
TOM	THOMAS	THOS	TOMMIE	TOMMY	
TOMMIE	THOMAS	THOS	TOM	TOMMY	
TOMMY	THOMAS	THOS	TOM	TOMMIE	
TONY	ANTHONY	ANTONY			
TRICIA	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTIE	PATTY	TRISH	TRISHA	
TRISH	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTIE	PATTY	TRICIA	TRISHA	
TRISHA	PAT	PATRICIA	PATRICK	PATSY	PATTI
	PATTIE	PATTY	TRICIA	TRISH	
VICKEY	VICKI	VICKIE	VICKY	VICTORIA	
VICKI	VICKEY	VICKIE	VICKY	VICTORIA	
VICKIE	VICKEY	VICKI	VICKY	VICTORIA	
VICKY	VICKEY	VICKI	VICKIE	VICTORIA	

NAME	EQUIVALENT				
VICTORIA	VICKEY	VICKI	VICKIE	VICKY	
WALT	WALTER				
WALTER	WALT				
WILL	BILL	BILLIE	BILLY	WILLIAM	WILLIE
	WILLY	WM			
WILLIAM	BILL	BILLIE	BILLY	WILL	WILLIE
	WILLY	WM			
WILLIE	BILL	BILLIE	BILLY	WILL	WILLIAM
	WILLY	WM			
WILLY	BILL	BILLIE	BILLY	WILL	WILLIAM
	WILLIE	WM			
WM	BILL	BILLIE	BILLY	WILL	WILLIAM
	WILLIE	WILLY			
WOODROW	WOODY				
WOODY	WOODROW				

Figure: 43 TAC §16.4(f)

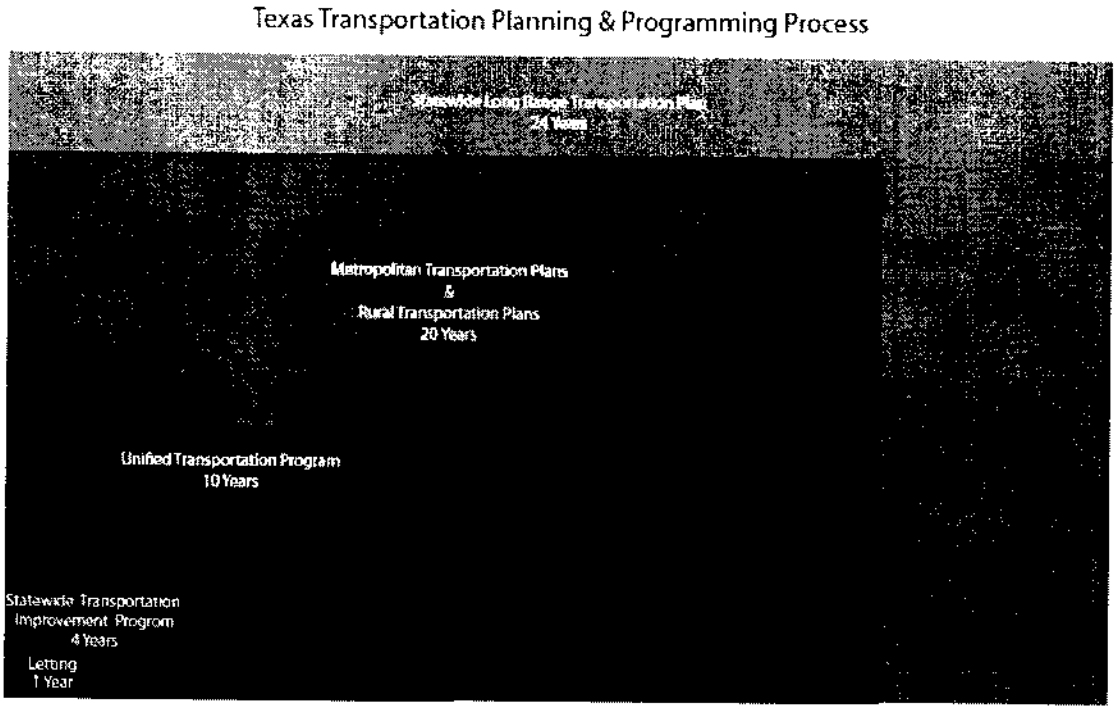


Figure: 43 TAC §28.22(c)(3)(F)(iii)

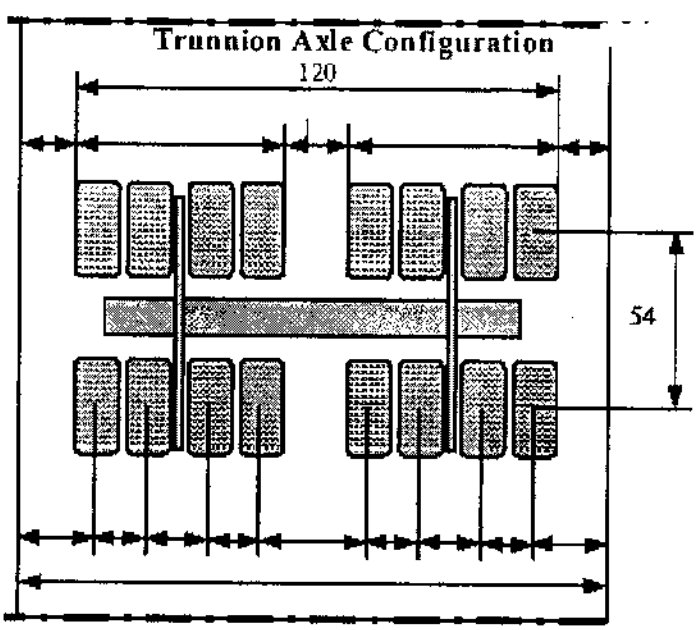
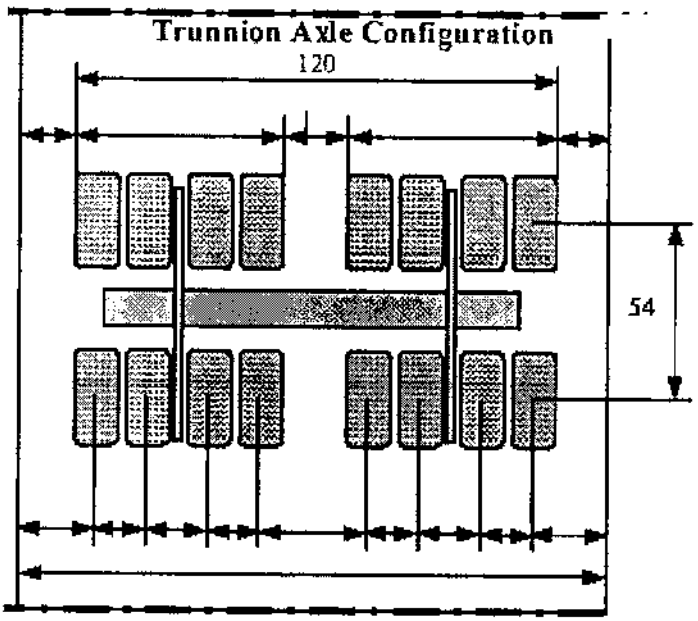


Figure: 43 TAC §28.32(c)(3)(F)(iii)



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: 2012 GO TEXAN Partner Program

The Texas Department of Agriculture (TDA) is accepting proposal for the 2012 GO TEXAN Partner Program (GOTEPP). GOTEPP is designed to provide matching funds for Tier 2, Tier 3 or sponsorship GO TEXAN members to market and promote their Texas agricultural products. TDA may distribute up to a total of $250,000 for project proposals that meet GOTEPP requirements and enhance the TDA's GO TEXAN Program.

Eligibility. Only project requests submitted by applicants who are physically located in Texas or who have their principal place of business in Texas shall be funded. An eligible applicant must be a current GO TEXAN Program Tier 2, 3 or sponsorship member and:

(1) a state or regional organization or board that promotes the marketing and sale of Texas agricultural products and does not stand to profit directly from specific sales of agricultural commodities;

(2) a cooperative organization, consisting of a group of five or more individuals who produce or market agricultural products in the state and associate to achieve common goals by registering with the Office of the Secretary of State;

(3) a state agency or board that promotes the marketing and sale of agricultural commodities;

(4) a national organization or board that represents Texas producers and promotes the marketing and sale of Texas agricultural products;

(5) a small business - a legal agricultural entity, including a corporation, partnership, or sole proprietorship that:

(A) is formed for the purpose of making a profit; and

(B) has fewer than 50 full-time employees or less than $1 million in annual gross receipts;

(6) any other entity or business, other than a business meeting the definition of small business, that promotes the marketing and sale of Texas agricultural products;

(7) retailer/distributors, if:

(A) 70% of their agricultural products are sourced from Texas;

(B) 70% of their products are sourced from GO TEXAN members; or

(C) 70% of their participating businesses, companies, or members and/or vendors are GO TEXAN members, other than associate or retail members.

Submitting an Application. Applications must be submitted on the form provided by TDA by the submission deadline. Application form GTBD-101 is available on TDA's website at www.gotexan.org, or upon request from TDA by calling (512) 463-6908.

Deadline for Submission of Responses. A complete, hard copy application with signature must be mailed and **postmarked by Friday, July 13, 2012.** The applicant is also required to submit the Project Narrative by email in a Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf), but whichever format is used, the text copy function must be operational. Electronic versions should be emailed to Grants@Texas-Agriculture.gov.

Complete applications with signature must be submitted to:

Physical Address: Mindy Fryer, Grants Specialist, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Mindy Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Additional information about the GOTEPP funding opportunity, the complete RFP and application are available on TDA's website at, http://www.gotexan.org/.

Assistance and Questions.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201202274
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 2, 2012

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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 05/07/12 - 05/13/12 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 05/07/12 - 05/13/12 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 05/01/12 - 05/31/12 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/12 - 05/31/12 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-201202221

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 1, 2012

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 11, 2012. 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 June 11, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Ali's Market, Incorporated dba Ali's Market; DOCKET NUMBER: 2012-0104-PST-E; IDENTIFIER: RN102272770; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BASF Corporation; DOCKET NUMBER: 2011-2315-AIR-E; IDENTIFIER: RN100223379; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: catalyst manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Air Permit Number 17624, Special Conditions Number 5, and Federal Operating Permit Number O1473, Special Terms and Conditions Number 11, by failing to maintain a minimum pH level of 9.0 and a minimum flow rate of 25 gallons per minute; PENALTY: $8,325; Supplemental Environmental Project offset amount of $3,330 applied to Houston Regional Monitoring Corporation Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chester Alton Andrews; DOCKET NUMBER: 2011-0792-MWD-E; IDENTIFIER: RN102095619; LOCATION: Keller, Tarrant County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011032001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with the permitted effluent limits; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0011032001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports at the specified frequency; 30 TAC §305.125(17) and TPDES Permit Number WQ0011032001, Sludge Provisions, by failing to submit a timely, complete, and accurate annual sludge report for the monitoring period ending July 31, 2010; 30 TAC §305.125(1) and TPDES Permit Number WQ0011032001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40%; 30 TAC §305.125(1) and (11)(B) and TPDES Permit Number WQ0011032001, Operational Requirements (OR) Number 11.f. and Sludge Provisions, Section II.E, by failing to have all required monitoring and reporting records for sludge removal from the facility available for review upon request; 30 TAC §305.125(1) and §319.11(b) and (d) and TPDES Permit Number WQ0011032001, Monitoring and Reporting Requirements Number 2, by failing to provide accurate flow measurements that conform to those prescribed in the Water Measurements Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C. or methods that are equivalent as approved by the executive director and by failing to properly conduct the chlorine residual analysis; 30 TAC §305.125(5) and TPDES Permit Number WQ0011032001, OR Number 1, by failing to conduct and maintain records of process controls at the facility; 30 TAC §317.4(a)(8), by failing to have the backflow prevention device tested annually; 30 TAC §305.125(5) and TPDES Permit Number WQ0011032001, OR Number 1, by failing to implement an adequate disinfection mechanism; 30 TAC §305.125(5) and TPDES Permit Number WQ0012342001, OR Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121, 30 TAC §305.125(1), and TPDES Permit Number WQ0011032001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharges of wastewater; and 30 TAC §305.125(9) and TPDES Permit Number WQ0011032001, Monitoring and Reporting Requirements Number 7.a., by failing to report the unauthorized discharge of wastewater; PENALTY: $43,269; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Domino; DOCKET NUMBER: 2011-2047-MLM-E; IDENTIFIER: RN101388866; LOCATION: Domino, Cass County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(III), (ii)(III), and (iii) - (vi), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's elevated storage tank; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.110(c)(4), by failing to monitor the disinfectant residual at various locations throughout the distribution system; 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed notification format as

specified in 30 TAC §290.47(e); 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $755; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of Lockhart; DOCKET NUMBER: 2011-1718-PST-E; IDENTIFIER: RN102004967; LOCATION: Lockhart, Caldwell County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: City of Pasadena; DOCKET NUMBER: 2011-0432-PST-E; IDENTIFIER: RN100663889 (Station 1) and RN102038197 (Station 2); LOCATION: Pasadena, Harris County; TYPE OF FACILITY: fleet service stations; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and making them immediately available for inspection upon request by agency personnel at Station 1 and Station 2; 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months or upon major system replacement or modification, whichever occurs first at Station 1; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing t0 monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) at Station 2; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability at Station 2; and 30 TAC §334.50(b)(2)(A)(ii)(I) and TWC, §26.3475(a), by failing to monitor each pressurized line for releases at least once every month at Station 2; PENALTY: $7,350; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Rhome; DOCKET NUMBER: 2012-0083-MWD-E; IDENTIFIER: RN102701620; LOCATION: Rhome, Wise County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010701002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $2,200; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Dallas County Schools; DOCKET NUMBER: 2012-0392-PST-E; IDENTIFIER: RN101631778; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2011-1816-AIR-E; IDENTIFIER: RN102805272; LOCATION: Carthage, Panola County; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations (CFR) §60.482-7(h)(2), Federal Operating Permit (FOP) Number O-0955, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 1.A., and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain less than 3% of the total number of valves in volatile organic compound service in a process unit as difficult-to-monitor; 30 TAC §101.20(1) and §122.143(4), 40 CFR §60.482-2(a)(2), FOP Number O-0955, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to conduct a weekly visual inspection of each pump in light liquid service for an indication of liquids dripping from pump seals; 30 TAC §101.20(1) and §122.143(4), 40 CFR §60.633(b)(3)(i), FOP Number O-0955, GTC and STC Number 1.A., and THSC, §382.085(b), by failing to repair a leak within 15 calendar days after the leak was detected; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, Special Conditions (SC) Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Flare Emission Point Number (EPN) 66; 30 TAC §101.20(2) and §113.1090, 40 CFR §63.6600(a) and §63.6640(a), FOP Number O-0955, GTC and STC Number 5, and THSC, §382.085(b), by failing to limit the formaldehyde concentration to 350 parts per billion (ppb) or less at 15% oxygen at Engine C-24A; 30 TAC §101.20(2) and §113.1090, 40 CFR §63.6600(a) and §63.6640(a), FOP Number O-0955, GTC and STC Number 5, and THSC, §382.085(b), by failing to limit the formaldehyde concentration to 350 ppb or less at 15% oxygen at Engine C-30 (EPN 51); 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, SC Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Plant Number 1 Amine Still (EPN 73VNT); 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, SC Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Plant Number 2 Amine Still (EPN 74VNT); 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, SC Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Plant Number 3 Amine Still (EPN 75VNT); 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, SC Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Swing Unit Number 4 Amine Still (EPN 70); and 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8925, PSDTX206M1, and PSDTX432M2, SC Number 1, FOP Number O-0955, GTC and STC Number 9, and THSC, §382.085(b), by failing to maintain emissions rates below permitted limits at the Plant Number 5 Amine Still (EPN P-5VNT); PENALTY: $631,628; Supplemental Environmental Project offset amount of $315,814 applied to Railroad Commission of Texas - Alternative Fuels Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2011-2257-AIR-E; IDENTIFIER: RN100218684; LOCATION: Midland, Andrews County; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 2211A, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions from the Acid Gas Emergency Flare Emission Point Number (EPN) AGFLR-1 and the Sulfur Recovery Unit Tail Gas Incinerator (EPN INC-1) during an emissions event (Incident Number 145813) on October 7, 2010 lasting four hours and seven minutes; PENALTY:

$3,125; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: DV Enterprises, Incorporated dba Lucky Lady 24; DOCKET NUMBER: 2012-0158-PST-E; IDENTIFIER: RN102281920; LOCATION: Red Oak, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that will ensure continuous corrosion protection to all metal components of the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,885; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Ed Bell Construction Company; DOCKET NUMBER: 2012-0040-AIR-E; IDENTIFIER: RN106236599; LOCATION: Gainesville, Cooke County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain proper authorization to operate a rock and concrete crusher; PENALTY: $938; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Gilbert Daniel Jr. and Noelle Glass dba Daniel's Exxon; DOCKET NUMBER: 2012-0009-PST-E; IDENTIFIER: RN101659902; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: $3,875; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: J.D. ABRAMS, L.P.; DOCKET NUMBER: 2011-2344-PST-E; IDENTIFIER: RN102274123; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Kenneth Dupuis dba Dupuis Chevron; DOCKET NUMBER: 2012-0192-PST-E; IDENTIFIER: RN101778025; LOCATION: Bridge City, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §115.246(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station; 30 TAC §115.245(5) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment by a person who is registered with the TCEQ to conduct Stage II vapor recovery tests; and 30 TAC §115.245(6) and THSC, §382.085(b), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office or the local air pollution control program with jurisdiction within ten working days of the completion of the tests; PENALTY: $7,650; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Kevin's Texas Quick Stop, Incorporated; DOCKET NUMBER: 2012-0416-PST-E; IDENTIFIER: RN101886026; LOCATION: Vega, Oldham County; TYPE OF FACILITY: convenience store with retail gasoline sales; RULE VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: $2,054; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Lake Texoma Highport, L.L.C. dba Highport Marina & Resort; DOCKET NUMBER: 2012-0058-PST-E; IDENTIFIER: RN101549228; LOCATION: Pottsboro, Grayson County; TYPE OF FACILITY: marina with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks (USTs); and 30 TAC §334.48(a) and TWC, §26.121, by failing to ensure the UST system was operated, maintained, and managed in a manner to prevent a release of regulated substances; PENALTY: $14,192; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Malloy Group, Incorporated dba Malloy Mart; DOCKET NUMBER: 2011-2006-PST-E; IDENTIFIER: RN101434850; LOCATION: Seagoville, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.10(b)(1)(B), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: NAQIB ENTERPRISES, INCORPORATED dba Food Town 3; DOCKET NUMBER: 2011-2068-PST-E; IDENTIFIER: RN102448214; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain copies of all required records pertaining to the UST system and making them immediately available for inspection upon request by agency personnel; PENALTY: $6,120; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Newell Recycling Company of El Paso, L.P.; DOCKET NUMBER: 2011-1758-MLM-E; IDENTIFIER: RN100581768; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: metal recycling; RULE VIOLATED: 30 TAC §111.201

and §330.209(a) and Texas Health and Safety Code, §382.085(b), by failing to ensure that piles of processed and non-processed non-ferrous materials (fluff) are stored in a manner that does not constitute a fire hazard; PENALTY: $4,837; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(21) COMPANY: Occidental Chemical Corporation; DOCKET NUMBER: 2011-2362-AIR-E; IDENTIFIER: RN100211176; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: Federal Operating Permit Number O1240, Special Terms and Conditions Number 18, New Source Review Permit Number 19169, Special Conditions Number 1, 40 Code of Federal Regulations §63.6(e) and §61.12(c), 30 TAC §101.20(2) and §116.115(c), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; Supplemental Environmental Project offset amount of $5,000 applied to Texas A&M University - Corpus Christi - Texas A&M University AutoCheck Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2011-2352-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Permit Numbers 3855B and PSDTX876, Special Conditions Number 1, and Federal Operating Permit Number O1324, Special Terms and Conditions Number 21, by failing to prevent unauthorized emissions; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000 applied to Houston Regional Monitoring Corporation Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: RASANA INCORPORATED dba Sals Shell; DOCKET NUMBER: 2012-0115-PST-E; IDENTIFIER: RN101554715; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: REED SHELL Incorporated; DOCKET NUMBER: 2011-2296-PST-E; IDENTIFIER: RN104073820; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $11,548; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Total Petrochemicals USA, Incorporated; DOCKET NUMBER: 2012-0087-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refining and chemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Permit Number 54026, Special Conditions (SC) Number 1, Permit Numbers 46396 and PSDTX1073M1, SC Number 1, Permit Number 8983A, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: $25,000; Supplemental Environmental Project offset amount of $12,500 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: TT & C, LLC dba Shell-C Store; DOCKET NUMBER: 2012-0349-PST-E; IDENTIFIER: RN102796299; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: $3,547; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Union Carbide Corporation; DOCKET NUMBER: 2012-0029-AIR-E; IDENTIFIER: RN100219351; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Air Permit Number 436, Special Conditions (SC) Number 1, and Federal Operating Permit (FOP) Number O1921, Special Terms and Conditions (STC) Number 11, by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for Incident Number 158230 within 24 hours of discovery; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), Air Permit Number 1961, SC Number 1, and FOP Number O1924, STC Number 12, by failing to comply with the annual allowable emissions rate (based on a rolling 12-month period); and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1924, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $63,384; Supplemental Environmental Project Offset amount of $25,354 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Walnut Cove Water Supply Corporation; DOCKET NUMBER: 2011-2178-MWD-E; IDENTIFIER: RN103123279; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121, 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012416001, Operational Requirements (OR) Number 1, Effluent Limitations and Monitoring Requirements Number 4, and Permit Conditions (PC) Number 2.d., by failing to properly operate and maintain the wastewater treatment plant resulting in high levels of foam and sewage debris in the receiving stream; 30 TAC §305.125(1) and TPDES Permit Number WQ0012416001, OR Number 1, by failing to properly maintain the wet wells; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number WQ0012416001,

PC Number 2.g., by failing t0 prevent unauthorized discharges of wastewater from the collection system; PENALTY: $29,350; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201202222
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 1, 2012

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 11, 2012.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 11, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Black Bear Energy Services, LLC; DOCKET NUMBER: 2011-0147-AIR-E; TCEQ ID NUMBER: RN105913099; LOCATION: 2001 West Highway 71, La Grange, Fayette County; TYPE OF FACILITY: skid-mounted oil and gas production equipment repair shop; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a) and 30 TAC §116.110(a), by failing to obtain authorization prior to conducting dry abrasive cleaning activities; and THSC, §382.085(b) and §382.0518(a) and 30 TAC §116.110(a), by failing to obtain authorization prior to conducting surface coating activities; PENALTY: $4,200; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, Austin, Texas 78711, (512) 339-2929.

(2) COMPANY: City of Orange; DOCKET NUMBER: 2011-0552-MWD-E; TCEQ ID NUMBER: RN101613644; LOCATION: 402 South 10th Street, between Jackson Street and Polk Avenue and approximately 1,800 feet west of Farm-to-Market Road 1006 (Border Street), Orange County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010626001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $98,350, Supplemental Environmental Project (SEP) offset amount of $98,350 applied to Custom Compliance SEP - Upgrade Jackson Street Wastewater Treatment Plant; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Edwin Moudry d/b/a Braesmain Texaco; DOCKET NUMBER: 2011-0858-PST-E; TCEQ ID NUMBER: RN102130903; LOCATION: 8001 Braesmain Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST for releases at a frequency of at least once a month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; PENALTY: $2,629; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Line Camp Partners, LLC d/b/a Line Camp Steakhouse; DOCKET NUMBER: 2011-1717-PWS-E; TCEQ ID NUMBER: RN105197057; LOCATION: 4610 Shaw Road, Tolar, Hood County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(B), by failing to collect one raw groundwater source Escherichia coli sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample during the months of April and May 2011, and by failing to provide notification to the customers of the facility regarding the failure to sample during the month of April 2011; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of April and May 2011, and by failing to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample collected during the month of April 2011; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five distribution coliform samples the month following a total coliform-positive sample result for the months of May and June 2011; PENALTY: $1,828; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: MISTRY ENTERPRISES INC. d/b/a Highland Food; DOCKET NUMBER: 2011-1797-PST-E; TCEQ ID NUMBER: RN101432276; LOCATION: 1406 Greenville Avenue, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $2,765; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: RICHMOND MART, L.L.C. d/b/a Texaco 231; DOCKET NUMBER: 2011-1627-PST-E; TCEQ ID NUMBER: RN102064805; LOCATION: 5716 Interstate 45 North, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201202223
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 1, 2012

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 11, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 11, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Caddell Stehpenson; DOCKET NUMBER: 2012-0327-PST-E; TCEQ ID NUMBER: RN101853695; LOCATION: Highway 59 and Todd Street, Timpson, Shelby County; TYPE OF FACILITY: underground storage tank (UST) system and a former gas station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: City of Del Rio; DOCKET NUMBER: 2011-1894-PWS-E; TCEQ ID NUMBER: RN101264299; LOCATION: Bayview Drive, Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(A) and §290.46(n)(3), by failing to provide copies of well completion data; PENALTY: $317; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Custom Water Co., L.L.C.; DOCKET NUMBER: 2012-0160-PWS-E; TCEQ ID NUMBER: RN101260115; LOCATION: 146 Alamo Road, Montague, Montague County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.43(c)(8) and TCEQ Agreed Order Docket Number 2008-0417-PWS-E, Ordering Provision Number 2.e.ii., by failing to provide ground storage tanks that meet American Water Works Association standards; PENALTY: $12,402; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: DES Corporation d/b/a Nocona Fina Mart; DOCKET NUMBER: 2011-1869-PST-E; TCEQ ID NUMBER: RN102477742; LOCATION: 111 East Highway 82, Nocona, Montague County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the pressurized piping associated with the USTs; PENALTY: $9,987; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Dustin Jobe; DOCKET NUMBER: 2011-1991-LII-E; TCEQ ID NUMBER: RN106191240; LOCATION: 3710 Southeast 34th Avenue, Amarillo, Potter County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003, Texas Occupational Code, §1903.251, and 30 TAC §30.5(a), by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; PENALTY: $742; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: GRIGGS SHELL ENTERPRISES, L.L.C.; DOCKET NUMBER: 2011-0942-PST-E; TCEQ ID NUMBER: RN102713922; LOCATION: 6955 Griggs Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a con-

venience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(4)(A)(i) and (C), by failing to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $11,075; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Jasper Cindi, Inc. d/b/a Bullfrogs Bar and Grill; DOCKET NUMBER: 2011-1743-PWS-E; TCEQ ID NUMBER: RN105973796; LOCATION: 4108 United States Highway 96 North, Jasper, Jasper County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis for the months of December 2010 - July 2011, and by failing to provide public notification of the failure to collect routine samples for the months of December 2010 - April 2011; PENALTY: $3,542; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Mostafa A. Soliman d/b/a Willowbrook Subdivision; DOCKET NUMBER: 2012-0267-PWS-E; TCEQ ID NUMBER: RN101256121; LOCATION: 31902 Willowbrook Street, Waller, Waller County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notice to the customers of the facility within 24 hours of low distribution pressure using the prescribed format in 30 TAC §290.47(e); PENALTY: $293; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Niranjan S. Patel d/b/a Aldine Express; DOCKET NUMBER: 2011-2015-PST-E; TCEQ ID NUMBER: RN102431038; LOCATION: 4203 Aldine Mail Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $3,386; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Omar Salinas; DOCKET NUMBER: 2011-1724-OSS-E; TCEQ ID NUMBER: RN106097876; LOCATION: 1033 Pearson, Freer, Duval County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.3(b)(1), by failing to obtain authorization to construct an OSSF; and TWC, §26.121(a)(1) and 30 TAC §285.81(d), by failing to prevent an unauthorized discharge of gray water; PENALTY: $787; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: Park Abrams Enterprises LLC d/b/a Park Abrams Flash Mart; DOCKET NUMBER: 2011-1935-PST-E; TCEQ ID NUMBER: RN102713377; LOCATION: 2410 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $8,177; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Penny Cable d/b/a Hilltop Tire Service; DOCKET NUMBER: 2011-1053-MSW-E; TCEQ ID NUMBER: RN101896538; LOCATION: 618 West Wise Street, Bowie, Montague County; TYPE OF FACILITY: new and used tire service facility; RULES VIOLATED: 30 TAC §328.56(b) and §330.15(c), by failing to use a registered transporter to transport scrap tires, and by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §328.56(c), by failing to use manifests to document the removal and management of all scrap tires generated on-site; PENALTY: $7,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(13) COMPANY: Rod Darquea d/b/a Affordable Home Construction; DOCKET NUMBER: 2011-1878-LII-E; TCEQ ID NUMBER: RN106209687; LOCATION: 921 West Pioneer Parkway, Grand Prairie, Dallas County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, Texas Occupational Code, §1903.251, by failing to obtain an irrigator license prior to altering an irrigation system; PENALTY: $742; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Shawn Kriese d/b/a Crosscreek Cycle Park; DOCKET NUMBER: 2011-1507-SLG-E; TCEQ ID NUMBER: RN106161755; LOCATION: 2988 East State Highway 21, Paige, Bastrop County; TYPE OF FACILITY: motorcycle race track with on-site septic facilities; RULES VIOLATED: 30 TAC §312.143, by failing to deposit sludge waste at an authorized facility; PENALTY: $7,500; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction; DOCKET NUMBER: 2011-1989-MSW-E; TCEQ ID NUMBER: RN106233125; LOCATION: 1030 Windy Pond, San Antonio, Bexar County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(a), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,150; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201202225
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 1, 2012

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 11, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 11, 2012.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: Beechnut Food Stores Inc., d/b/a Sunshine Food Mart; DOCKET NUMBER: 2011-1296-PST-E; TCEQ ID NUMBER: RN102314036; LOCATION: 12800 Northborough Drive, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,175; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201202224

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 1, 2012

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Notice of Water Quality Applications

The following notices were issued on April 20, 2012 through April 27, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

GULF REDUCTION CORPORATION which operates a zinc dust manufacturing facility has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003751000, which authorizes the discharge of treated storm water associated with industrial activities at an intermittent and flow variable basis. The facility is located at 6020 Esperson Street, in the City of Houston, Harris County, Texas, 77011.

PUBLIC SERVICE COMPANY OF OKLAHOMA which operates Oklaunion Power Station, a coal-fired steam electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0002574000, which authorizes the discharge of coal pile runoff; wash water from the reclaim sump, rotary car dumper, and service area; and plant area storm water runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 12567 Farm-to-Market Road 3430, approximately three miles south-southeast of the intersection of Farm-to-Market Road 433 and Farm-to-Market Road 3430 near the town of Oklaunion, Wilbarger County, Texas 76384.

WAL-MART STORES EAST LP which operates Wal-Mart Distribution Center No. 6036, has applied for a renewal of TPDES Permit No. WQ0003597000, which authorizes the discharge of treated domestic wastewater and washdown water. The facility is located immediately north of U.S. Highway 79/84, east of Farm-to-Market Road 645 and west of County Road 2206, approximately seven miles southwest of the City of Palestine, Anderson County, Texas 75803.

CITY OF RICHMOND has applied for a renewal of TPDES Permit No. WQ0010258004 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 8,715 feet east of the intersection of U.S. Highway 59 and Farm-to-Market Road 762 in Fort bend County, Texas 77469.

OAK MANOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010700001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located at 7926 Highway 35 South, approximately 2000 feet northeast of the intersection of State Highway 35 and County Road 192 and 0.8 mile southwest of the intersection of State Highway 35 and Farm-to-Market Road 2917 in Brazoria County, Texas 77511.

CITY OF SHEPHERD has applied for a renewal of TPDES Permit No. WQ0011380001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 1,400 feet northeast of the

intersection of U.S. Highway 59 and State Highway 150 in San Jacinto County, Texas 77371.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 15 has applied for a renewal of TPDES Permit No. WQ0012223001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 15315 Tuckerton Road, approximately 1.5 miles southeast of the intersection of U.S. Highway 290 and Telge Road in Harris County, Texas 77054.

OCEANEERING INTERNATIONAL INC has applied for a renewal of TPDES Permit No. WQ0012466001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 11917 Farm-to-Market Road 529 in Harris County, Texas 77041.

THIRTY TWO REAL ESTATE INVESTMENT LTD has applied for a renewal of TPDES Permit No. WQ0013395001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 14811 Farm-to-Market Road 1097 West, in Willis, approximately 100 feet south of Farm-to-Market Road 1097 West and 0.25 mile east of Lake Conroe in Montgomery County, Texas 77378.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 57 has applied for a renewal of TPDES Permit No. WQ0014519001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 4303-1/2 Longmont Hills Lane, approximately 5,200 feet east of Farm-to-Market Road 1463, approximately 10,000 feet north of the intersection of Farm-to-Market Road 1463 and Farm-to-Market Road 1093 in Fort Bend County, Texas 77494.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 58 has applied for a major amendment to TPDES Permit No. WQ0014520001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 900,000 gallons per day to an annual average flow not to exceed 1,050,000 gallons per day. The proposed amendment also requests to add an interim phase flow at a daily average flow not to exceed 700,000 gallons per day. The facility is located at 3203 Spring Green Road, northeast of the intersection of Corbitt and Katy-Flewellen Road, approximately 3,100 feet south of Crossover and Katy-Flewellen Road in Fort Bend County, Texas 77494.

If you need more information about these permit applications or the permitting process, please call the Texas Commission on Environmental Quality Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201202270
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 2, 2012

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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 April 18, 2012, through April 25, 2012. 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 General Land Office's web site. The notice was published on the web site on May 2, 2012. The public comment period for this project will close at 5:00 p.m. on June 1, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Mr. Greg Betterton; Location: The project site is located 7 miles east-northeast of the intersection of State Highway 185 and Farm-to-Market 1289 in Calhoun County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Port O'Connor, Texas. NAD 83, Latitude: 28.47038 North; Longitude: -96.43425 West. Project Description: The project purpose is to construct a large-scale inland marina community with waterfront lots and associated boat access on the middle Texas coast. The proposed 183-acre multi-use development will include 244 waterfront and water-view lots, 9.24 acres of condominium space, 3.79 acres of townhome space, 2.50 acres for a proposed restaurant and marina building complex, a 37.94 acre saltwater basin with an accompanying marina and a 1,720-foot by 100-foot access channel and associated breakwaters for ingress and egress of recreational boats into Matagorda Bay. Approximately 635,000 cubic yards of soils from on-site uplands and interior freshwater wetlands will be excavated for construction of the saltwater basin and marina. Approximately 31,570 cubic yards of bay bottom sediments and unvegetated tidal fringe bottom are proposed to be excavated from Matagorda Bay for construction of the access channel. The project is anticipated to impact 10.97 acres of jurisdictional waters of the U.S. Approximately 3.32 acres of emergent wetlands and 1.30 acres of tidal bottom will be filled. Also, approximately 2.59 acres of emergent wetlands will be graded and excavated. The applicant proposes to perform in-kind mitigation to compensate for impacts to natural resources resulting from construction of the proposed project. Approximately 8.87 acres of freshwater wetlands, 0.015 acre of submerged aquatic vegetation, and 0.15 acre of unvegetated beach will be created on-site or adjacent to the project area. CMP Project No.: 12-0707-F1 Type of Application: U.S.A.C.E. permit application #SWG-2008-01336R is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: David Hudson, Fairport North Industrial, LLC; Location: The project site is located in wetlands adjacent to Big Island Slough, southeast of the intersection of Fairmont Parkway and Underwood Parkway, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. NAD 83, Latitude: 29.647637 North; Longitude: -95.075457 West. Project Description: The applicant proposes to construct a commercial warehouse complex and parking lot. To construct the proposed project, the applicant proposes to fill 8.98 acres of jurisdictional wetlands. The complex will include 4 warehouse buildings and a parking lot. The purpose of the proposed warehouse complex is to create storage space for shipping containers and cargo close to the Bayport and Barbour's Cut Terminal facilities. To compensate for impacts to jurisdictional wetlands, the applicant proposes to create 5.13 acres of wetlands within an onsite mitigation area. CMP Project No.: 12-0702-F1 Type of Application: U.S.A.C.E. permit application #SWG-2011-00740 is being evaluated

under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201202271
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: May 2, 2012

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Texas Health and Human Services Commission

Public Hearing Notice

Proposed new rule concerning the Medicaid Recovery Audit Contractor Program

May 22, 2012

10:00 - 11:00 a.m.

Meeting Site:

Health and Human Services Braker Center

Lone Star Conference Room

11209 Metric Boulevard, Building H

Austin, Texas

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments on the proposed new rule §354.1451, concerning the Medicaid Recovery Audit Contractor Program, under 1 TAC Part 15, Chapter 354, Subchapter B.

The Medicaid Recovery Audit Contractor Program is being established to comply with §1902(a)(42) of the Social Security Act and 42 C.F.R. Part 455 to promote the integrity of the Medicaid program. The rule will establish a program in which HHSC contracts with one or more recovery audit contractors to identify underpayments and overpayments under the Medicaid program and recover the overpayments for services provided under the Medicaid State Plan or under any waiver of the Medicaid State Plan.

Written Comments. Written comments on the proposed new rule may be submitted to Deborah Keyser, Special Projects Lead, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 13247, MC-H390, Austin, Texas 78711; by fax to (512) 491-1957; or by e-mail to deborah.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

People requiring Americans with Disabilities Act accommodation, auxiliary aids, or services should call Leigh A. Van Kirk at (512) 491-2813 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201202170
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 27, 2012

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Public Hearing Notice

Draft 2013 - 2017 Strategic Plan

May 30, 2012

11:00 a.m. - 2:00 p.m.

Meeting Site:

CentroMed Southside Medical

Encino Ballroom

3750 Commercial Ave

San Antonio, Texas 78221

Welcome and Introductions

Review of Strategic Planning Process

Laura Jordan, Planning and Evaluation Manager

Strategic Decision Support, HHSC

Public Comment

Adjourn

Tom Suehs

Interested parties may view the draft plan online at the HHSC website (www.hhsc.state.tx.us) on or after May 16, 2012. Printed copies may be obtained by contacting Laura Lucinda by telephone: (512) 424-4268; fax: (512) 424-6840; or email: laura.lucinda@hhsc.state.tx.us on or after May 16, 2012.

Written comments may be made **until 5:00 p.m. on Friday, June 1, 2012.**

For additional information, contact Laura Lucinda at (512) 424-4268 or laura.lucinda@hhsc.state.tx.us.

TRD-201202171
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 27, 2012

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Public Hearing Notice

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a second public hearing to receive comments on its proposed changes to the administrative rule codified in 1 Texas Administrative Code §355.8065, relating to the Disproportionate Share Hospital (DSH) Reimbursement Methodology. The proposed amendment to the rule was published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2823). The Medical Care Advisory Committee meeting on Thursday, May 10, 2012, functions as the first public hearing. Notice of the first hearing appeared in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2826) in the preamble to the proposed rule.

The second public hearing on the proposed rule amendment will occur on **Friday, May 18, 2012,** beginning at 9:00 a.m. at William B. Travis State Office Building, 1701 N. Congress Avenue, Room 1-111, Austin,

Texas. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1358 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed amendment includes changes to the methodology for allocating DSH funds, which is being proposed by HHSC in response to a petition for adoption of a rule that was submitted to HHSC by the Texas Coalition of Transferring Hospitals (TCTH). TCTH hospitals provide funding for the non-federal share of payments to all hospitals under the DSH program. Additional proposed changes are: (1) delete language pertaining to calculation of the hospital-specific limit, which was moved to another proposed rule; and (2) clarify current rule language and administrative processes. The proposed changes are more fully summarized in the preamble to the proposed rule, published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2823).

Written Comments. Written comments regarding the proposed rule changes may be submitted in lieu of, or in addition to, oral testimony within 30 days of publication of the proposed rule amendment in the *Texas Register*. Written comments may be sent by U.S. mail to the attention of Diana Miller in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1436, by e-mail to costinformation@hhsc.state.tx.us or may be hand-delivered to Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201202216
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 30, 2012

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Public Hearing Notice

Proposed changes to Texas Health and Human Services Commission's Texas Health Care Transformation and Quality Improvement Program 1115 Waiver Proposed Regional Healthcare Partnership Map

May 17, 2012

1:30 p.m. - 4:30 p.m.

Meeting Site:

Texas Health and Human Services Commission

Brown-Heatly Building

Public Hearing Room

4900 North Lamar Boulevard

Austin, Texas

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments on the proposed regional healthcare partnership (RHP) map that will be released in May. In early April 2012, HHSC issued a map dated March 30, 2012, outlining proposed RHP boundaries under the Texas Healthcare Transformation and Quality Improvement 1115 waiver. The updated May map incorporates feedback HHSC received from proposed anchor entities and counties on the proposed March 30, 2012, map.

HHSC is finalizing the map and anchors to ensure regions will have sufficient time for participants to work together to develop the RHP regional plans. This public hearing is the final opportunity to voice proposed changes to the RHP map.

Contact: Laela Estus, Medicaid CHIP, Texas Health and Human Services Commission, TXHealthcareTranformation@hhsc.state.tx.us, (512) 491-1128. This meeting is open to the public. No reservations are required and there is no cost to attend this meeting.

People with disabilities, who wish to attend the meeting and require auxiliary aids or services, should contact Shanece Collins at (512) 491-1323 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201202220
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: May 1, 2012

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Public Hearing Notice: Draft Health and Human Services Coordinated Strategic Plan and HHS Agencies' Strategic Plans for 2013 - 2017

Wednesday, May 23, 2012

11:00 a.m. - 2:00 p.m.

Meeting Site:

Family Services Center, Training Room

901 Avenue B

Brownwood, Texas 76801

Public Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comment on the Health and Human Services (HHS) System Draft Strategic Plan for 2013 - 2017, which covers the provision of health and human services in Texas. This plan includes the HHS Coordinated Strategic Plan, required every two years by Texas Government Code, §531.022, and the five HHS agencies' strategic plans, required by Texas Government Code, Chapter 2056. Representatives will attend from the HHS agencies listed here.

The Health and Human Services Commission

The Department of Aging and Disability Services

The Department of Assistive and Rehabilitative Services

The Department of Family and Protective Services

The Department of State Health Services

Draft Strategic Plan. Interested parties may view the draft plan online at the HHSC website (www.hhsc.state.tx.us) on or after May 16, 2012. An electronic mailbox linked to the website will be available for comments. Printed copies may be obtained by contacting Laura Lucinda by telephone: (512) 424-4268; fax: (512) 424-6840; or email: laura.lucinda@hhsc.state.tx.us on or after May 16, 2012.

Written Comments. Written comments regarding the HHS System Strategic Plan Draft may be submitted in lieu of, or in addition to, oral testimony **until 5:00 p.m. on Friday, June 1, 2012.** Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or e-mail. The addresses are provided as follows.

U.S. Mail

Attention: HHS Strategic Planning

HHSC Strategic Decision Support, Mail Code 1950

P.O. Box 13247

Austin, Texas 78711-3247

Overnight mail, special delivery mail, or hand delivery

Attention: HHS Strategic Planning

HHSC Strategic Decision Support, Mail Code 1950

4900 North Lamar Boulevard

Austin, Texas 78751-2316

Phone number for package delivery: (512) 424-4268

Fax

Attention: Laura Lucinda at (512) 424-6840

E-mail

laura.lucinda@hhsc.state.tx.us

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services or Spanish language translation services should call Laura Lucinda at (512) 424-4268 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201202175
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 27, 2012

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Public Notice

NOTE: This public notice contains a correction to a Texas Health and Human Services Commission's public notice published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3241). The earlier notice did not note that the referenced state plan amendment also would clarify language related to the payment of cost-sharing for renal dialysis crossover claims.

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 12-022 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The requested effective date for the proposed amendment is May 1, 2012.

The Texas Medicaid Program makes cost sharing payments for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. This cost sharing is paid for Medicare Part A hospital services and Medicare Part B physician and other outpatient services. On January 1, 2012, Texas Medicaid began limiting payment for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, pursuant to direction in the 2012-2013 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011). This policy, called Medicare Equalization, aligned policies on payment of cost sharing for Medicare Part B services with payment of Medicare Part A services, which already were subject to a similar payment methodology.

The purpose of this amendment is to exempt services provided by psychologists, psychiatrists, licensed clinical social workers, and specific services related to the transport of portable x-ray equipment and personnel from Medicare Equalization. The exemption will allow Texas Medicaid to make higher cost-sharing payments for these services. HHSC has determined that a higher payment amount is necessary for these services to ensure adequate access to care. The proposed amendment also clarifies that the special payment methodology for renal dialysis crossover claims pertains to claims submitted by renal dialysis facility providers.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $7,653,955 for the remainder of federal fiscal year (FFY) 2012, consisting of $4,456,133 in federal funds and $3,197,822 in state general revenue. For FFY 2013, the estimated additional annual expenditure is $19,698,341 consisting of $11,681,116 in federal funds and $8,017,225 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Carisa Magee by mail at Texas Health and Human Services Commission, 11209 Metric Boulevard, Building H, Mail Code H-600, Austin, Texas 78758; by telephone at (512) 491-1412; by facsimile at (512) 491-1953; or by e-mail at carisa.magee@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201202273
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: May 2, 2012

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FCSU Life, assumed name of FIRST CATHOLIC SLOVAK UNION OF THE UNITED STATES OF AMERICA AND CANADA, a foreign fraternal. The home office is in Independence, Ohio.

Application for VALLEY BAPTIST INSURANCE COMPANY, a domestic life, accident and/or health company, DBA (doing business as) BAPTIST HEALTH PLAN. The home office is in Harlingen, Texas.

Any objections must be filed with the Texas Department of Insurance within twenty (20) calendar days from the date of the *Texas Register* publication and addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201202148
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 26, 2012

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Notice of Public Hearing

The Texas Department of Insurance (the department) will conduct a public hearing under Docket Number 2733 for the purpose of selecting a license testing contractor to provide certain services under Insurance Code, Chapter 4002. The hearing is scheduled for May 22, 2012, at 9:30 a.m., in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas. The hearing is held in compliance with Insurance Code, Chapter 4002, which requires that the department hold a public hearing before the department may negotiate and enter into an agreement with a testing service. The hearing provides opportunity for comment by members of the public and the insurance industry.

RFP No. 12-MVB-3762. On March 22, 2012, the department issued a Request for Proposals (RFP) for the purpose of acquiring a contractor to provide testing services that meet the examination requirements for persons seeking license as agents, insurance service representatives,

counselors, risk managers, or adjusters under the Insurance Code. The department's RFP was posted electronically on the State of Texas Electronic State Business Daily web page and a notice of issuance was sent via e-mail to vendors on the State's Centralized Master Bidders List (CMBL) who were registered to receive notice of solicitations matching the services in the RFP. The deadline for the department's receipt of proposals was 1:00 p.m., April 13, 2012. The department received three (3) proposals in response to the RFP.

Project Description. The selected contractor shall provide the department with testing services that include examination development, test scheduling, examination site arrangement, and the test's administration, grading, reporting, and analysis. The selected contractor shall assist in the preparation of the annual report the department submits to the Texas Legislature that addresses whether there is disparity in the pass rates based on demographic information as required by Insurance Code, §4002.008. The selected contractor shall also cooperate with advisory boards, if any, appointed by the Commissioner of Insurance under Insurance Code, Chapter 4002. The required services are described in the department's RFP and in 28 Texas Administrative Code §§19.1101 - 19.1104.

Proposal Evaluation and Award. Proposals were reviewed and evaluated by an evaluation committee based on the evaluation criteria set forth in the RFP. The evaluation committee will submit its recommendations to the Commissioner of Insurance prior to or during the public hearing for the selection of the contractor. See also 28 Texas Administrative Code §§19.1101 - 19.1104.

The department reserves the right to reject any or all proposals or offers deemed not to be in the best interests of the department or the State of Texas. The department will not make any payments to any contractor for services performed or costs incurred under the terms of or in connection with any contract awarded as a result of the department's issuance of the RFP. The selected contractor's sole compensation will be through the contractor's collection from applicants of certain specific fees that have been approved by the department in writing as described in the RFP. The department will not make any payments for any costs incurred by any contractor in preparing a proposal response to the RFP; such costs may not be recouped by the selected contractor under the terms of any resulting contract.

Anticipated Schedule

It is anticipated that the selection of a contractor for the performance of services to begin effective September 1, 2012, will proceed according to the following approximate timetable.

TDI issuance of RFP March 22, 2012

Deadline for Proposals April 13, 2012

TDI appointment of Evaluation Committee March 22, 2012

TDI public hearing to make selection May 15, 2012

Contract signed May 31, 2012

Exam Review Workshop July 31, 2012

Design and implementation of new system June 15 through September 1, 2012

New system operational September 1, 2012

The department reserves the right to change these dates.

Contacts. Parties may request a copy of the department's RFP by contacting Martin V. Blair, Purchaser, of Procurement and General Services, Mail Code 108-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Requests should be in writing and addressed to: martin.blair@tdi.state.tx.us, telephone (512) 322-4364. For further information regarding the hearing, parties should contact the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6326.

TRD-201202146
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 26, 2012

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North Central Texas Council of Governments

Request for Information for IH 30 Managed Lane Technology Demonstration

The North Central Texas Council of Governments (NCTCOG), in partnership with the Texas Department of Transportation (TxDOT), North Texas Tollway Authority (NTTA) and Dallas Area Rapid Transit (DART), is seeking letters of interest and product information on equipment capable of: 1) automatic vehicle occupancy detection and verification; and/or 2) dynamic tracking of vehicles traveling through a corridor and the individual vehicle speed through the corridor to determine appropriate toll and potential rebate rates. Respondents are requested to demonstrate proposed products by way of a technology assessment expected to occur in the IH 30 (Tom Landry Highway) corridor from downtown Dallas to Arlington and complete by August 31, 2012. This Request for Information (RFI) is issued solely for information and planning purposes - it does not constitute a Request for Proposal (RFP) or a promise to issue an RFP in the future. This RFI does not commit NCTCOG to contract for any supply or service whatsoever. Costs associated with preparing a response to this request are at the respondent's own expense and will not be reimbursed by NCTCOG. Not responding to this RFI does not preclude participation in any future RFP, if any is issued.

Release and Due Date

The RFI was issued and made available on NCTCOG's website on May 4, 2012. Responses to the RFI must be received no later than 5:00 p.m., on Friday, June 1, 2012, via mail or hand-delivery, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76005-5888 (mail) or 616 Six Flags Drive, Arlington, Texas 76011 (hand-delivery). Copies of the RFI are available at http://www.nctcog.org/trans/admin/rfp. NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201202268
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 2, 2012

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Action

Land Donation

Sheldon Lake State Park - Harris County

In a meeting on May 24, 2012, the Texas Parks and Wildlife Commission (the Commission) will consider granting a drainage easement and accepting the donation of approximately 2.5 acres of land at

Sheldon Lake State Park, Harris County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comments may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201202138
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 26, 2012

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Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application of Entergy Texas, Inc. for approval of an application to transfer operational control of its transmission assets to the Midwest Independent Transmission System Operator, Inc. (MISO) Regional Transmission Organization (RTO) pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §14.101 and §37.154 (Vernon 2007 and Supplement 2011) (PURA).

Docket Style and Number: Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO, Docket Number 40346.

The Application: With this application Entergy Texas, Inc. (ETI) proposes to transfer operational control of its transmission assets to the MISO RTO. As a result of the proposed transfer, MISO will exercise control over the Entergy transmission system, including control over both operations and planning. ETI states that the MISO/Entergy System combined footprint will span a geographic area from Canada to the Gulf of Mexico. The MISO RTO would operate, control access to, and plan investments in ETI's transmission system. Approval of this application will affect all of ETI's customers in all areas of its service territory, but will not immediately impact ETI's retail electricity rates. ETI does not seek a modification of rates or services as a result of this proposed transaction. ETI requests a commission finding that all aspects of this transfer fall within the scope of the Public Utility Regulatory Act, Texas Utility Code Annotated §14.101 and §37.154 (Vernon 2007 and Supplement 2011).

Persons who wish to intervene in or comment upon this application should notify the Public Utility Commission of Texas as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 40346.

TRD-201202265
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 1, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 25, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Grimes, Walker, and Montgomery Counties, Texas.

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Single Circuit Transmission Line in Grimes, Walker, and Montgomery Counties, Docket Number 40319.

The Application: The proposed project is designated as the Sandy Substation and Transmission Line Project. The total estimated cost for the project, including the transmission line and substation costs, is approximately $13,683,308 depending on the route chosen. The proposed project will consist of a new Sandy Substation and approximately 14 to 19 miles of 138-kV single-circuit transmission line with single-pole structures. The proposed project is presented with 39 alternative routes consisting of a combined 53 route segments and three possible substation locations. These route segments combine to make up 39 route alternatives. The commission may approve any of the routes or route segments presented in the application.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 11, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40319.

TRD-201202217
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 30, 2012

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Notice of Workshop

The staff of the Public Utility Commission (commission) of Texas will hold a workshop Thursday, June 7, 2012, to discuss changes to P.U.C. Substantive Rule §26.403, relating to Texas High Cost Universal Service Plan (THCUSP). The proposed changes to P.U.C. Substantive Rule §26.403 are pursuant to the direction of the commission at the Open Meeting of January 26, 2012, in Project No. 39939. A draft rule illustrating such potential changes will be filed in the commission's Central Records office on or about Thursday, May 24, 2012, in Project No. 40342.

Parties should note that the draft illustrative rule will contain changes pertaining to phasing down of Texas Universal Service Fund (TUSF) support in areas containing an unaffiliated, unsubsidized competitor, and a placeholder section pertaining to standards of proof for providers of last resort to demonstrate need for support in order to be financially able to meet such provider of last resort obligations. The purpose of the workshop will only be to discuss those potential standards of proof.

The workshop will begin at 9:30 a.m., in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 40342, *Rulemaking Proceeding to Amend Subst. R. §26.403 Relating to the Texas High Cost Universal Service Plan* has been established for this proceeding. Interested parties who wish to have proposals regarding standards of proof discussed at the workshop must file 16 copies of such

proposals with Central Records no later than 4:00 p.m. on Thursday, May 24, 2012. Parties who wish to respond to other parties' initial filed proposals or to comments made by other parties at the workshop may do so by filing 16 copies of such comments with Central Records no later than 4:00 p.m. on Thursday, June 14, 2012. Comments should be limited to no more than ten pages.

Questions concerning the workshop or this notice should be referred to Mark Bryant, Competitive Markets Division, at (512) 936-7279 or at mark.bryant@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201202176
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2012

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program and Unified Transportation Program

The Texas Department of Transportation (department) will hold a joint public hearing on Wednesday, May 30, 2012 at 10:00 a.m. at 150 East Riverside Drive, Room 1B-1, in Austin, Texas to receive public comments on the May 2012 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011-2014 and proposed updates to the 2012 Unified Transportation Program (UTP) and 2013 UTP.

The STIP reflects the federally funded transportation projects in the FY 2011-2014 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in 43 Texas Administrative Code Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

A copy of the proposed May 2012 Quarterly Revisions to the FY 2011-2014 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5033, and on the department's website at: www.txdot.gov.

Information regarding the proposed updates to the 2012 UTP and the 2013 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5043, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Tuesday, May 29, 2012, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed May 2012 Quarterly Revisions to the FY 2011-2014 STIP and the updates to the 2012 UTP and the 2013 UTP to Marc D. Williams, Director of Planning, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2012 UTP and 2013 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, June 11, 2012.

TRD-201202269
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 2, 2012

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